

market as the Agency Order prematurely ended the PIM auction and at what time the unrelated order ended the PIM auction, and the number of times such orders were entered by the same (or affiliated) firm that initiated the PIM that was terminated;

(13) The percentage of PIM early terminations due to the receipt of a market or marketable limit order in the same series on the opposite side of the market that occurred within a 1/2 second of the start of the PIM auction; the percentage that occurred within one second of the start of the PIM auction; the percentage that occurred within one and 1/2 seconds of the start of the PIM auction; the percentage that occurred within 2 seconds of the start of the PIM auction; the percentage that occurred within 2 and 1/2 seconds of the PIM auction; and the average amount of price improvement provided to the Agency Order where the PIM is terminated early at each of these time periods;

(14) The number of times that a non-marketable limit order in the same series on the same side of the market as the Agency Order that would cause the price of the Crossing Transaction to be outside of the best bid or offer on the Exchange prematurely ended the PIM auction and at what time the unrelated order ended the PIM auction, and the number of times such orders were entered by the same (or affiliated) firm that initiated the PIM that was terminated;

(15) The percentage of PIM early terminations due to the receipt of a market or marketable limit order in the same series on the same side of the market as the Agency Order that would cause the price of the Crossing Transaction to be outside of the best bid or offer on the Exchange that occurred within a 1/2 second of the start of the PIM auction; the percentage that occurred within one second of the start of the PIM auction; the percentage that occurred within one and 1/2 second of the start of the PIM auction; the percentage that occurred within 2 seconds of the start of the PIM auction; the percentage that occurred within 2 and 1/2 seconds of the PIM auction; and the average amount of price improvement provided to the Agency Order where the PIM is terminated early at each of these time periods; and

(16) The average amount of price improvement provided to the Agency Order when the PIM auction is not terminated early (*i.e.*, runs the full three seconds).

VI. Accelerated Approval of Amendments No. 2 and 3

Pursuant to section 19(b)(2) of the Act,⁹⁴ the Commission may not approve any proposed rule change, or amendment thereto, prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding. The Commission hereby finds good cause for approving Amendments No. 2 and 3 to the proposal, prior to the 30th day after publishing notice of Amendments No. 2 and 3 in the **Federal Register**. The revisions made to the proposal in the ISE's Amendment No. 2 clarify the operation of the PIM and were provided in response to issues raised in the Comment Letter and by Commission staff. In addition, the ISE in Amendment No. 3 established that paragraphs (c)(5), (d)(5), and (d)(6) of proposed ISE Rule 723 would be effective for a pilot period expiring on July 18, 2005. The Commission believes that the proposed changes in Amendments No. 2 and 3 are necessary to the proper functioning and implementation of the ISE PIM. The Commission further believes that Amendments No. 2 and 3 do not raise issues of regulatory concern that warrant further delay. Therefore, the Commission believes that accelerated approval of Amendments No. 2 and 3 is appropriate. Accordingly, pursuant to section 19(b)(2) of the Act,⁹⁵ the Commission finds good cause to approve Amendments No. 2 and 3 prior to the 30th day after notice of the Amendment is published in the **Federal Register**.

VII. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5) of the Act.⁹⁶

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹⁷ that the proposed rule change (SR-ISE-2003-06) and Amendment No. 1 are approved; and that Amendments No. 2 and 3

⁹⁴ 15 U.S.C. 78s(b)(2).

⁹⁵ 15 U.S.C. 78s(b)(2).

⁹⁶ 15 U.S.C. 78f(b)(5). In connection with the issuance of this approval order, neither the Commission or its staff is granting any exemptive or no-action relief from the requirements of Rule 10b-10. Accordingly, a broker-dealer executing a customer order through the PIM will need to comply with all applicable requirements of that Rule.

⁹⁷ 15 U.S.C. 78s(b)(2).

thereto are approved on an accelerated basis, except that provisions relating to paragraphs (c)(5), (d)(5), and (d)(6) of ISE Rule 723 are approved on a pilot basis until July 18, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹⁸

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04-27395 Filed 12-14-04; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50823; File No. SR-NASD-2004-168]

Self-Regulatory Organizations; Notice of Filing of and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Certificate of Designation for Preferred Stock of The Nasdaq Stock Market, Inc.

December 8, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 1, 2004 the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by Nasdaq. Pursuant to Rule 19b-4(f)(3),³ Nasdaq has designated this filing as one solely concerned with the administration of the self-regulatory organization, and as such, the filing is immediately effective. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing with the Commission a Certificate of Designations, Preferences and Rights ("Certificate of Designation") of Series C Cumulative Preferred Stock ("Series C Preferred") authorized to be issued to the NASD. The issuance of the Series C Preferred is part of a transaction between the NASD and Nasdaq whereby 1,338,402 shares of Nasdaq's Series A Cumulative Preferred

⁹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(3).

Stock ("Series A Preferred") owned by the NASD (representing all of the outstanding shares of Series A Preferred) will be exchanged for 1,338,402 shares of Nasdaq's Series C Preferred. The exchange of the Series A Preferred for the Series C Preferred is designed, among other things, to reduce Nasdaq's current dividend obligations to the NASD since the Series C Preferred has a lower initial dividend rate than the Series A Preferred, subject to payment of an additional dividend in certain circumstances.

Under Section 151(g) of the General Corporation Law of the State of Delaware ("Delaware Law"), such Certificate of Designation is deemed to be an amendment to Nasdaq's Restated Certificate of Incorporation. Pursuant to Exchange Act Rule 19b-4(f)(3),⁴ Nasdaq has designated this filing as one solely concerned with the administration of the self-regulatory organization because the authorization and issuance of the Series C Preferred results in no substantive change in the NASD's control of Nasdaq, and as such, the filing is immediately effective.

II. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections 1, 2, and 3 below, of the most significant aspects of such statements.

1. Purpose

Nasdaq is filing the Certificate of Designation described below. Under Article Fourth, Paragraph B of Nasdaq's Restated Certificate of Incorporation, Nasdaq's Board of Directors may authorize the issuance of preferred stock and fix its designation, powers, preferences and rights, as well as any qualifications, limitations, and restrictions on it. Under Delaware Law, such Certificate of Designation is deemed to be an amendment to Nasdaq's Restated Certificate of Incorporation, and as such, Nasdaq is filing the Certificate of Designation with the Commission.

The issuance of the Series C Preferred is part of a transaction between the NASD and Nasdaq whereby 1,338,402 shares of Series A Preferred owned by

the NASD (representing all of the outstanding shares of Series A Preferred) will be exchanged for 1,338,402 shares of Nasdaq's Series C Preferred. The principal differences between the Series A Preferred and the Series C Preferred concern the amount and timing of dividend payments by Nasdaq to the NASD. The Series A Preferred carries an annual dividend rate of 7.6% for the year commencing March 2003, increasing to 10.6% for years thereafter. The Series C Preferred carries an annual dividend rate of 3.0% for the first two years from the applicable calculation date, increasing to 10.6% for periods thereafter. The Certificate of Designation sets forth certain situations in which the NASD will be entitled to an additional dividend amount upon redemption of the outstanding Series C Preferred, which Nasdaq may elect to pay in cash or shares of its common stock. Both the Series A Preferred and C Preferred are non-voting unless Nasdaq fails to pay a timely dividend. Thus, as in the case of the Series A Preferred, if Nasdaq fails to pay a timely dividend on the Series C Preferred, Nasdaq must increase the size of its Board to add two directors elected by the holders of the Series C Preferred.⁵ Also, as in the case of the Series A Preferred, such directors would be required to resign upon the payment of the dividend or the redemption of the Series C Preferred. The NASD may not transfer the Series C Preferred without the prior written consent of Nasdaq for a period of one year from its issuance, which is the same initial transfer restriction period as was contained in the Series A Preferred.

The exchange of Series A Preferred for Series C Preferred and the issuance of the Series C Preferred will result in no substantive change in NASD's control of

⁵ Nasdaq continues to discuss with the Commission staff how Nasdaq intends to meet its obligation for fair representation of members on its Board under section 6(b)(3) of the Act if Nasdaq obtains approval of its exchange registration application. As a result of these discussions, Nasdaq may submit to the Commission amendments to its By-Laws with respect to its Board composition. The potential By-laws amendments under discussion could require the election of additional Board members if the Series C Preferred holder's right to elect Board members is triggered to ensure that the fair representation obligation is met at all times. December 1, 2004, telephone conference between John Zecca, Associate General Counsel, Nasdaq, and Geoff Pemble, Special Counsel, Division of Market Regulation, Commission. In addition, the Commission recently proposed rules that pertain to the governance, administration, transparency and ownership of self-regulatory organizations, which include compositional requirements for the board of directors of self-regulatory organizations. See Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126 (December 8, 2004).

Nasdaq since neither series of preferred stock has voting rights, except in the limited circumstances discussed above. The Series C Preferred also will have no effect on the voting trust that governs the warrants to purchase Nasdaq common stock that were sold by the NASD in two private placements that closed in June 2000 and January 2001.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(2) and (6) of the Act,⁶ which require, among other things, that the Association be so organized and have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance with the provisions of the Act, and that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Nasdaq believes that the issuance of this preferred stock will result in no substantive change in its current relationship to the NASD; as under the current ownership structure, the NASD will continue to control Nasdaq until exchange registration.

3. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

4. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for the Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act⁷ and subparagraph (f)(3) of Securities Exchange Act Rule 19b-4 thereunder because it is concerned solely with the administration of the self-regulatory organization.⁸ At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for

⁶ 15 U.S.C. 78o-3(b)(2) and (6).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(3).

⁴ 17 CFR 240.19b-4(f)(3).

the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2004-168 on the subject line.

Paper comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2004-168. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASD-2004-168 and should be submitted on or before January 5, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4-3650 Filed 12-14-04; 8:45 am]

BILLING CODE 8010-01-P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice to waive the nonmanufacturer rule for general aviation turboprop aircraft with six or more passenger seats.

SUMMARY: The U. S. Small Business Administration (SBA) is granting a waiver of the Nonmanufacturer Rule for General Aviation Turboprop Aircraft With Six Or More Passenger Seats. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses, service-disabled veteran-owned small businesses, SBA's Very Small Business Program or 8(a) businesses to provide the products of small business manufacturers or processors on such contracts.

DATE: This waiver is effective December 30, 2004.

FOR FURTHER INFORMATION CONTACT: Edith Butler, Program Analyst, by telephone at (202) 619-0422; by FAX at (202) 481-1788; or by e-mail at edith.butler@sba.gov.

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act, (Act) 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, SBA's Very Small Business Program or 8(a) businesses to provide the products of small business manufacturers or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406 (b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any "class of products" for which there

⁹ 17 CFR 200.30-3(a)(12).

are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1204, in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines "class of products" based on six digit coding systems. The first coding system is the Office of Management and Budget North American Industry Classification System (NAICS). The second is the Product and Service Code established by the Federal Procurement Data System.

The SBA received a request on September 7, 2004 to waive the Nonmanufacturer Rule for General Aviation Turboprop Aircraft With Six Or More Passenger Seats. In response, on October 18, 2004, SBA published in the **Federal Register**, and October 19, 2004 in FedBizOpps notices of intent to the waiver of the Nonmanufacturer Rule for General Aviation Turboprop Aircraft With Six Or More Passenger Seats.

In response to these notices, comments were received from interested parties. SBA has determined from these sources that there are no small business manufacturers of this class of product, and is therefore granting the waiver of Nonmanufacturer Rule for General Aviation Turboprop Aircraft With Six Or More Passenger Seats NAICS 336411.

Authority: 15 U.S.C. 637(a)(17).

Emily Murphy,

Acting Associate Administrator for Government Contracting.

[FR Doc. 04-27424 Filed 12-14-04; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at Nick Wilson Field, Pochahontas, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at Nick Wilson Field under the provisions of title 49 United States Code, section 47153.

DATES: Comments must be received on or before January 14, 2005.