

("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 29, 2003, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. 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**

The Exchange proposes to amend its membership dues and fees schedule ("Schedule") to decrease certain technology and connectivity fees charged to the Exchange's on-floor member firms, and to waive those fees for the month of June 2003. The text of the proposed rule change is available at the Commission and at the CHX.

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

In its filing with the Commission, the Exchange 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. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

The CHX proposes to amend the Schedule by decreasing the charges assessed to on-floor member firms for the computer equipment and connectivity that the Exchange provides, and by waiving the fees for this technology for the month of June 2003.

The Exchange made changes to this section of the Schedule in February

2003, decreasing many of the fees and instituting new connectivity fees.<sup>4</sup> The new charges set forth in the instant proposed rule change reflect a further decrease in the amounts charged for this equipment and connectivity to better reflect the costs to the Exchange of providing both this technology and the services associated with it, and to ensure that these fees do not have an unintended financial impact on the Exchange's member firms. The Exchange also seeks to waive these otherwise-applicable fees for the month of June 2003, to counteract, to some extent, the impact of the initially higher fees instituted in February 2003.

##### **2. Statutory Basis**

The Exchange believes the proposed rule change is consistent with section 6(b)(4) of the Act<sup>5</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

No written comments were solicited or received.

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

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>6</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>7</sup> because it involves a due, fee, or other charge. At any time within 60 days of the filing of the 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 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 proposal is

consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR-CHX-2003-14, and should be submitted by July 1, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 03-14564 Filed 6-9-03; 8:45 am]

BILLING CODE 8010-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47970; File No. SR-NASD-2003-88]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Extend the Pilot for the Operation of the Short Sale Rule in a Decimals Environment**

June 3, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 29, 2003, 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 ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the

<sup>4</sup> See Securities Exchange Act Release No. 47369 (February 14, 2003), 68 FR 8788 (February 25, 2003)(SR-CHX-2003-01).

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

Act,<sup>3</sup> and Rule 19b-4(f)(6)<sup>4</sup> thereunder, which renders the proposal effective upon filing with the Commission. 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 proposes to extend through December 1, 2003, the penny (\$0.01) legal short sale standard contained in NASD Interpretative Material 3350 ("IM-3350").<sup>5</sup> Without such an extension this standard would terminate on May 31, 2003. Nasdaq does not propose to make any substantive changes to the pilot; the only change is an extension of the pilot's expiration date through December 1, 2003. Nasdaq requests that the Commission waive both the 5-day notice and 30-day operative requirements contained in Rule 19b-4(f)(6)(iii)<sup>6</sup> of the Act. If such waivers are granted by the Commission, Nasdaq will implement this rule change immediately.

### **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 its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

On March 2, 2001, the Commission approved, on a one-year pilot basis ending March 1, 2002,<sup>7</sup> Nasdaq's proposal to establish a \$0.01 above the

bid standard for legal short sales in Nasdaq National Market securities as part of the Decimals Implementation Plan for the Equities and Options Markets. The pilot program has been continuously extended since that date and is currently set to expire on May 31, 2003.<sup>8</sup> Nasdaq now proposes to extend, through December 1, 2003, that pilot program. Extension until December 1st, will allow Nasdaq and the Commission to continue to evaluate the impact of the penny short sale pilot and thereafter take action on Nasdaq's separate pending proposal to make the penny short sale standard permanent.<sup>9</sup> If approved, Nasdaq would continue during the pilot period to require NASD members seeking to effect "legal" short sales when the current best (inside) bid displayed by Nasdaq is lower than the previous bid, to execute those short sales at a price that is at least \$0.01 above the current inside bid in that security. Nasdaq believes that continuation of this pilot standard appropriately takes into account the important investor protections provided by the short sale rule and the ongoing relationship of the valid short sale price amount to the minimum quotation increment of the Nasdaq market (currently also \$0.01).

##### **2. Statutory Basis**

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act<sup>10</sup> in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) protect investors and the public interest.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and
- (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> At any time within 60 days of the filing of the 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 the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive both the 5-day notice and the 30-day operative delay. The Commission believes waiving the 5-day notice and 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through December 1, 2003, and will provide Nasdaq and the Commission with an opportunity to evaluate the impact of the penny short sale pilot. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>13</sup>

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> In its filing, Nasdaq inadvertently referred to text changes in subparagraph (b)(1) of IM-3350 instead of subparagraph (b)(2). Recent changes to NASD Rule 3350 and IM-3350 renumbered subparagraph (b)(1) as subparagraph (b)(2). See Securities Exchange Act Release No. 46999 (December 13, 2002), 67 FR 78534 (December 24, 2002). Telephone call between Gregory J. Dumark, Division of Market Regulation, Commission, and Thomas P. Moran, Office of General Counsel, Nasdaq.

<sup>6</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>7</sup> Securities Exchange Act Release No. 44030 (March 2, 2001), 66 FR 14235 (March 9, 2001).

<sup>8</sup> Securities Exchange Act Release No. 47309 (February 4, 2003), 68 FR 6981 (February 11, 2003).

<sup>9</sup> See SR-NASD 2002-09.

<sup>10</sup> 15 U.S.C. 78o-3(b)(6).

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 Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to file number SR-NASD-2003-88 and should be submitted by July 1, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03-14565 Filed 6-9-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47965; File No. SR-NYSE-2003-20]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the New York Stock Exchange, Inc. Extending the Pilot Program To Disengage NYSE Direct+® in Five Actively Traded Stocks

June 2, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 28, 2003, the New York Stock Exchange, Inc. ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the NYSE. The Exchange has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A)(iii) of the Exchange Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>5</sup> The NYSE asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

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

The NYSE is proposing to extend its pilot to disengage NYSE Direct+<sup>6</sup> in five actively-traded stocks to assess the impact of autoquoting<sup>7</sup> of bids and offers in connection with the Exchange's initiative to disseminate NYSE LiquidityQuote.<sup>8</sup> NYSE also proposes to amend the language in NYSE Rule 1000, which originally restricted the pilot to a one-week period. Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are bracketed.

\* \* \* \* \*

#### Rule 1000

##### Automatic Execution of Limit Orders Against Orders Reflected in NYSE Published Quotation

Only straight limit orders without tick restrictions are eligible for entry as auto ex orders. Auto ex orders to buy shall be priced at or above the price of the published NYSE offer. Auto ex orders to sell shall be priced at or below the price of the NYSE bid. An auto ex order shall receive an immediate, automatic execution against orders reflected in the Exchange's published quotation and shall be immediately reported as NYSE transactions, unless:

(i)-(vi) No change.

Auto ex orders that cannot be immediately executed shall be displayed as limit orders in the auction market. An auto ex order equal to or greater than the size of the NYSE's published bid or offer shall trade against the entire published bid or offer, and a new bid or offer shall be published pursuant to Rule 60(e). The unfilled balance of the auto ex order shall be displayed as a limit order in the auction market.

<sup>6</sup> NYSE Rules 1000-1005 provide for the automatic execution of limit orders of 1,099 shares or less against the Exchange's disseminated bid or offer. NYSE Direct+ was originally filed as a one-year pilot. See Securities Exchange Act Release No. 43767 (Dec. 22, 2000), 66 FR 834 (January 4, 2001) (SR-NYSE-00-18). The Direct+ pilot was subsequently extended for an additional year by Securities Exchange Act Release No. 45331 (January 24, 2002), 67 FR 5024 (February 1, 2002) (SR-NYSE-2001-50), and recently extended for an additional year by Securities Exchange Act Release No. 46906 (November 25, 2002), 67 FR 72260 (December 4, 2002) (SR-NYSE-2002-47).

<sup>7</sup> The Exchange will autoquote or automatically update the NYSE's highest bid or lowest offer whenever a limit order is transmitted to the specialist's book at a price higher (lower) than the previously disseminated highest (lowest) bid (offer).

<sup>8</sup> For further details on LiquidityQuote, see Securities Exchange Act Release No. 47614 (April 2, 2003), 68 FR 17140 (April 8, 2003) (SR-NYSE-2002-55).

During a [one-week] pilot program in 2003, NYSE Direct+ shall not be available in the following five stocks: American Express (AXP), Pfizer (PFE), International Business Machines (IBM), Goldman Sachs (GS), and Citigroup (C). The Exchange will announce in advance to its membership the *time* [week] the pilot will run.

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

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

In SR-NYSE-2003-10, the Commission approved the Exchange's proposed rule change to conduct a one-week pilot to disengage NYSE Direct+ in five actively-traded stocks.<sup>9</sup> The purpose of the pilot was to assess the impact of autoquoting bids and offers in connection with the Exchange's initiative to disseminate NYSE LiquidityQuote.<sup>10</sup> According to the NYSE, the pilot was initially scheduled to run from May 21, 2003 until May 28, 2003, and NYSE LiquidityQuote was initially scheduled to begin on May 21, 2003. However, the Commission issued an order granting an interim stay on the implementation of NYSE LiquidityQuote until June 6, 2003.<sup>11</sup>

To assess the impact of autoquoting bids and offers in connection with the liquidity quote initiative, the NYSE is proposing to extend the pilot until June 20, 2003. The NYSE believes that continuing the pilot will provide continuity and avoid starting and stopping the disengagement of NYSE Direct+. According to the NYSE, this continuity should aid in the learning process for NYSE Floor personnel.

<sup>9</sup> See Securities Exchange Act Release No. 47793 (May 2, 2003), 68 FR 25071 (May 9, 2003). The stocks are American Express (AXP), Pfizer (PFE), International Business Machines (IBM), Goldman Sachs (GS), and Citigroup (C).

<sup>10</sup> See *supra* note 7.

<sup>11</sup> See *In the Matter of the Application of Bloomberg L. P.*, Securities Exchange Act Release No. 47891 (May 20, 2003).