

unnecessary multiple examinations and regulatory duplication.⁹ With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.¹⁰ Rule 17d-1, adopted on April 20, 1976,¹¹ authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with financial responsibility requirements imposed by the Act, or by Commission or SRO rules. When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with applicable financial responsibility rules.

On its face, Rule 17d-1 deals only with an SRO's obligations to enforce broker-dealers' compliance with the financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices, and trading activities and practices.

To address regulatory duplication in these other areas, on October 28, 1976, the Commission adopted Rule 17d-2 under the Act.¹² This rule permits SROs to propose joint plans allocating regulatory responsibilities with respect to common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to and foster the development of a national market system and a national clearance and settlement system, and in conformity with the factors set forth in Section 17(d) of the Act. Commission

approval of a plan filed pursuant to Rule 17d-2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. Discussion

The Commission finds that the proposed plan is consistent with the factors set forth in Section 17(d) of the Act¹³ and Rule 17d-2(c)¹⁴ in that the proposed plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of the national market system. In particular, the Commission believes that the proposed plan is an achievement of cooperation between the ISE and NASD which will reduce unnecessary regulatory duplication by allocating to NASD certain responsibilities related to options-related sale practice regulation for members that belong to both the ISE and NASD. Furthermore, because the ISE and NASD will coordinate their regulatory functions in accordance with the plan, the plan will promote investor protection.

III. Conclusion

This order gives effect to the plan, as amended, filed with the Commission that is contained in File S7-966. The parties shall notify all members affected by the plan, as amended, of their rights and obligations under the amended plan.

It Is Therefore ordered, pursuant to Sections 17(d)¹⁵ and 11A(a)(3)(B)¹⁶ of the Act, that the plan of the ISE and NASD, as amended, filed pursuant to Rule 17d-2,¹⁷ is approved.

It Is Therefore ordered that the ISE is relieved of those responsibilities allocated to NASD under the plan, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48080; File No. SR-BSE-2003-11]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange Relating to an Extension of a Temporary Exemption Concerning an Interpretation of Its Execution Guarantee Rule

June 24, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 16, 2003, the Boston Stock Exchange ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons and to grant accelerated approval retroactively to June 5, 2003.

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

The Exchange proposes to extend a temporary exemption related to an interpretation of its Execution Guarantee Rule in response to Commission action regarding *de minimis* trades through of certain Exchange Traded Funds ("ETFs") in the Intermarket Trading System ("ITS").

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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

⁹ 15 U.S.C. 78q(d). See also Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session. 32 (1975).

¹⁰ 17 CFR 240.17d-1 and 17 CFR 240.17d-2.

¹¹ See Securities Exchange Act Release No. 12352, 41 FR 18809 (May 3, 1976).

¹² See Securities Exchange Act Release No. 12935, 41 FR 49093 (November 8, 1976).

¹³ 15 U.S.C. 78q(d).

¹⁴ 17 CFR 240.17d-2(c).

¹⁵ 15 U.S.C. 78q(d).

¹⁶ 15 U.S.C. 78k-1(a)(3)(B).

¹⁷ 17 CFR 240.17d-2.

¹⁸ 17 CFR 200.30-3(a)(34).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

1. Purpose

The purpose of the proposed rule change is to extend a temporary exemption granted to the Exchange regarding an Interpretation of its Execution Guarantee Rule in response to Commission action concerning *de minimis* trades through of certain ETFs in ITS.

The Exchange's original rule proposal in this matter was filed in response to a Commission order issued August 28, 2002, granting a *de minimis* exemption for transactions in certain ETFs from the Trade-Through Provisions of the ITS Plan ("Order").³ As of the implementation date of the Order, September 4, 2002, certain executions that took place according to the Rules of the Exchange would have been deemed violative of the provisions thereof.⁴ On September 9, 2002, the Exchange requested, and was subsequently granted, a thirty day implementation of a proposed rule, which would allow the Exchange to not enforce a specific provision of its rules relating to trade-through protection for certain securities.⁵ The Commission granted this temporary exemption for a period of thirty days, set to expire October 3, 2002, and the exemption was subsequently extended to June 4, 2003.⁶ The Exchange is now seeking to extend the period of the effectiveness of the Commission's order until March 4, 2004, consistent with a recent order extending the overall ETF *de minimis*

³ See Securities Exchange Act Release No. 46428 (August 28, 2002), 67 FR 56607 (September 4, 2002). Pursuant to this Release, participants of the ITS Plan were exempt from Section 8(d) of the Plan, for the period of September 4, 2002 until June 4, 2003, with respect to transactions in QQQs, DIAMONDS, and SPDRs, that are executed at a price that is no more than three cents lower than the highest bid displayed in CQS and no more than three cents higher than the lowest offer displayed in CQS.

⁴ Chapter II, *Dealings on the Exchange*, Section 33, *Execution Guarantee*, of the BSE Rules paragraph (c)(2) states that "[a]ll agency limit orders will be filled if one of the following conditions occur * * * (2) there has been price penetration of the limit in the primary market * * *." There are similar provisions in various sections of Chapter XV, *Dealer Specialists*. These provisions, in particular those set forth in Chapter II, guarantee that a limit order in a BSE specialist's book will be filled if the primary market trades through the limit price. When the BSE specialist provides this trade-through protection to its customer limit orders, he is permitted to seek relief through ITS.

⁵ See Securities Exchange Act Release No. 46482 (September 10, 2002), 67 FR 58662 (September 17, 2002) (SR-BSE-2002-13).

⁶ See Securities Exchange Act Release No. 46651 (October 11, 2002), 67 FR 64669 (October 21, 2002) (SR-BSE-2002-18).

exemption until that date.⁷ The Exchange has requested that the proposed rule be effective retroactively to June 5, 2003, to avoid a lapse of the previous exemptions.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act⁸ and furthers the objectives of Section 6(b)(5),⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, in that it is designed to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

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

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

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

The Exchange has neither solicited nor received comments on the proposed rule change.

III. 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. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at

⁷ See Securities Exchange Act Release No. 47950 (May 30, 2003), 68 FR 33748 (June 5, 2003).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

the principal office of the BSE. All submissions should refer to the file number in the caption above and should be submitted by July 22, 2003.

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission finds that the proposed rule is consistent with the requirements of Section 6(b)(5) of the Act¹¹ because it is designed to facilitate transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of the publication of notice thereof in the **Federal Register**, and for granting approval retroactively to June 5, 2003, the date of the Commission's extension of the ITS exemption. The Commission believes that by extending the Exchange's proposed exemption for its members, the Exchange removes the specialist's obligation to provide trade-through protection in situations where it will not be permitted to seek satisfaction through ITS from the primary market.

This obligation was one the BSE assumed voluntarily in order to make its market more attractive to sources of order flow, not an obligation the Act imposes on a market. The Commission believes that the business decision to potentially forego order flow by no longer providing print protection is a judgment the Act allows the BSE to make.¹²

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-BSE-2003-11) is approved on an accelerated basis and is effective retroactively to June 5, 2003.

¹⁰ In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(5).

¹² The Commission notes that the BSE's proposed rule change will remain in effect only until the expiration of the extension of Commission's ITS Exemption Order on March 4, 2004.

¹³ 15 U.S.C. 78f(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48078; File No. SR-NASD-2003-72]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. to Reduce the Non-Directed Order Maximum Response Time for Order-Delivery ECNs in Nasdaq's SuperMontage System

June 24, 2003.

On April 14, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² to reduce, from 30 seconds to 7 seconds, the maximum time allowed for Nasdaq's National Market Execution System ("NNMS") Order-Delivery Electronic Communications Networks ("Order-Delivery ECNs") to respond to non-directed orders sent to them by Nasdaq's SuperMontage system ("SuperMontage"). On May 15, 2003, Nasdaq submitted Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended, was published in the **Federal Register** on May 23, 2003.⁴ The Commission received no comments on the proposed rule change. This order approves the proposed rule, as amended.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁵ Specifically, the Commission believes that the proposal

is consistent with Section 15A(b)(6) of the Act,⁶ which requires, among other things, that the rules of an association promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

The Commission believes that, given Nasdaq's recent analysis of ECN responsiveness, which indicates that the average response-time across all ECNs participating in SuperMontage is less than one quarter of a second, reducing the maximum time period for Order-Delivery ECNs to respond to non-directed orders from 30 seconds to 7 seconds should give market participants a sufficient amount of time to respond to orders sent through SuperMontage.⁷ Nasdaq noted that the current 30-second response time in some cases could inappropriately delay the processing of orders. The Commission believes that the 7-second maximum response time is appropriate to give ECNs ample time to execute non-directed orders sent to them, and to allow other market participants to more swiftly retrieve and execute orders originally dispatched to non-responsive ECNs, thereby helping Nasdaq to facilitate faster executions in SuperMontage. Further, the Commission notes that Nasdaq has represented that it will continue to monitor ECN responsiveness to delivered orders in SuperMontage and propose additional modifications if warranted.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-NASD-2003-72), as amended, is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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¹ 15 U.S.C. 78o-3(b)(6).

² In its filing with the Commission, Nasdaq noted that the 30-second time period contained in the current rule resulted, in part, because of concerns raised by commenters in response to Nasdaq's proposal to implement SuperMontage. Nasdaq had originally proposed a 7-second response time, but commenters expressed concerns about past Nasdaq system issues related to the delivery of messages to market participants. Therefore, Nasdaq amended its proposal and extended the response time to thirty seconds. See Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (approving SR-NASD-99-53). Nasdaq now represents that, based upon SuperMontage's performance to date, such concerns are no longer valid and a 7 second response time is appropriate.

³ 15 U.S.C. 78s(b)(2).

⁴ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48079; File No. SR-NASD-2003-94]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Technical Amendments to Rule 2210

June 24, 2003.

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 June 11, 2003, the National Association of Securities Dealers, Inc. ("NASD"), 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 NASD. NASD has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by 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

NASD is proposing to amend NASD Rule 2210 to reinsert certain existing rule language that was inadvertently omitted from amendments to NASD Rule 2210 that the Commission recently approved. The text of the proposed rule change is available at the Office of the Secretary, NASD, and at the Commission.

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

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated May 15, 2003 ("Amendment No. 1").

⁴ Securities Exchange Act Release No. 47883 (May 16, 2003), 68 FR 28312.

⁵ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).