approach to revenue sharing and determined that the approach reflected in the proposed rule was feasible and appropriate, given the costs involved and competitive concerns.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[8] in general, and with Sections 15A(b)(5)[9] and (b)(6) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls; and in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition, and to 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 result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 10b–4(f)(6) thereunder.[12]

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

Nasdaq has requested that the Commission waive the 30-day operative delay contained in Rule 19b–4(f)(6)(iii) under the Act[13] based upon a representation that the proposal will allow Nasdaq to implement more competitive pricing for transactions reported to the trade reporting service of the Nasdaq Market Center, and in that it is intended as a response to a similar program instituted by a competitor on an immediately effective basis. In light of the foregoing, the Commission believes such waiver is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.[14]

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–2006–077 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–077. 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 Room. 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–2006–077 and should be submitted on or before July 31, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Nancy M. Morris,

Secretary.

[FR Doc. E6–10713 Filed 7–7–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54088; File No. SR–NASD–2004–135]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 4 to the Proposed Rule Change, to Adopt NASD Rule 2441 to Require Disclosure and Consent When Trading on a Net Basis With Customers

June 30, 2006

I. Introduction

On September 1, 2004, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to require disclosure and consent when trading on a net basis with customers. NASD amended the proposed rule change on February 16, 2005,[3] February 25, 2005,[4] and March 21, 2005.[5] The

[8] 15 U.S.C. 78*o*–3.

[9] 15 U.S.C. 78*o*–3(b)(5)

[10] 15 U.S.C. 78*o*–3(b)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Amendment No. 1.

[4] *See* Amendment No. 2.

[5] *See* Amendment No. 3.

proposed rule change, as modified by Amendment Nos. 1, 2, and 3, was published for notice and comment in the **Federal Register** on April 6, 2005.[6] The Commission received three comments on the proposal.[7] On September 13, 2005, NASD responded to the comments, and amended the proposed rule change.[8] This order provides notice of filing of Amendment No. 4, and approves the proposed rule change as modified by Amendment Nos. 1, 2, 3, and grants accelerated approval to Amendment No. 4.

II. Summary of Comments

The Commission received a total of three comment letters on the NASD's proposal to require consent and disclosure when trading with customers on a net basis. One commenter requested clarification with respect to the interplay between the proposal and NASD Rule 4632. The other two comment letters expressed various objections to the proposal. The following summary of comments provides an overview of the commenters' concerns.

• *With Respect to Non-Institutional Clients, Requiring Mandatory, Written, Pre-trade Disclosure and Consent on an Order-By-Order Basis is Unnecessarily Burdensome to Broker-Dealers*

One commenter asserts that the rule as proposed places an unnecessary burden on broker-dealers when trading on a net basis on behalf of non-institutional clients. The rule requires that, for non-institutional clients, broker-dealers must provide pre-trade disclosure to and obtain consent from the client in writing on an order-by-order basis.[9] The commenter stated that ''the actions detailed in this proposed rule change would be confusing to the client, costly to the firm, and impossible to manage and track on an order-by-order basis.'' [10] The commenter expressed concern that ''[t]he proposed rule would burden the firm with additional time and money spent on record keeping and auditing practices'' and hinder a broker-dealer's ability to obtain best execution of its customers' orders.[11] Similarly, another commenter—while agreeing in principle with disclosure and consent rules—stated that the requirement ''for a knowing, written consent on an order-by-order basis * * * is impractical where most orders are not taken in writing, and there is no opportunity to obtain [such a consent].'' [12] This commenter proposed modifying the rule to permit the use of negative consent letters (similar to what the rule requires vis-à-vis institutional clients) or of obtaining oral consent on an order-by-order basis and to permit such consent to be evidenced on the customer order ticket.[13]

Moreover, the two commenters opined that the additional burdens placed on broker-dealers by the rule could not be justified by any added benefit to investors.[14] One commenter pointed out that, because the advent of decimal pricing in 2000 substantially reduced the practice of net trading generally, the rule would have little practical benefit.[15]

• *With Respect to Institutional Clients, Requiring Disclosure and Consent via Negative-Consent Letters is Unnecessarily Burdensome to Broker-Dealers*

Regarding institutional clients, the commenters similarly objected to the rule's consent and disclosure requirements via a ''negative consent'' letter as unnecessarily burdensome. One commenter stated that the rule was wholly unnecessary because ''investors already receive a 'net' trading disclosure when an account is opened * * * [and] institutional investors by nature are accredited and sophisticated.'' [16] Another commenter, citing the declining practice of net trading since decimalization, argued that ''the costs and burden of sending, receiving and tracking negative consent letters are excessive in light of the fact that institutional customers would receive the requisite level of protection, if not greater, by providing verbal consent on an order-by-order basis.'' [17] This commenter therefore suggested modifying the proposed rule to allow the use of negative consent letters or of obtaining oral consent on an order-by-order basis and to permit the consent to be evidenced on the customer order ticket.[18]

• *Member Firms and Other Registered Broker-Dealers Should Be Explicitly Exempt from the Proposed Rule*

One commenter requested that the NASD clarify the proposed rule change to ''confirm that member firms and other registered broker-dealers are exempt from the requirements of the Proposed Rule, as they are neither institutional nor non-institutional customers.'' [19]

• *The Proposed Rule Should Be Clarified With Respect to Net Orders Routed Between Broker-Dealers*

The commenter further requested that the NASD clarify the proposed rule change to ''confirm [that] an executing broker-dealer handling an order marked 'net' routed to it from an originating broker-dealer has no consent and disclosure obligation to the customer of the originating broker-dealer for whom it is handling the order.'' [20]

• *The Proposed Rule Potentially Conflicts With Rule 4632(d)(3)(A) Regarding Reporting Trades Exclusive of Any Mark-Up, Mark-Down, or Service Charge*

One commenter noted a potential conflict between the proposed rule and Rule 4632(d)(3)(A), which states that trades must be reported exclusive of any mark-up, mark-down, or service charge.[21]

III. The NASD's Response to Comments

NASD responded to the comments in Amendment No. 4. Regarding the commenters' assertion that the proposed disclosure and consent requirements were unnecessary for institutional customers, NASD amended the proposed rule change to allow members the option of obtaining consent from institutional customers orally, on an order-by-order basis. However, NASD does not believe a one-time disclosure

[6] *See* Securities Exchange Act Release No. 51457 (March 31, 2005), 70 FR 17489.

[7] *See* April 20, 2005 letter from David Sieradzki, Esquire, Milbank Tweed, to Lourdes Gonzales, Division of Market Regulation, SEC (via e-mail) (''Milbank Letter''); April 27, 2005 letter from Klindt Ginsberg, Managing Director, The Seidler Companies, Inc. (via e-mail) (''Seidler Letter''); May 4, 2005 letter from Amal Aly and Ann Vlcek, Vice Presidents and Associate General Counsels, Securities Industry Association (''SIA''), to Jonathan G. Katz, Secretary, SEC (''SIA Letter'').

[8] *See* Amendment No 4.

[9] This contrasts with the lower burden for institutional clients under the proposed rule, in which broker-dealers may fulfill their disclosure and consent requirements via a one-time ''negative consent'' letter. *See* Securities Exchange Act Release No. 51457 (March 31, 2005), 70 FR 17489 (April 6, 2005) (SR–NASD–2004–135).

[10] Seidler Letter.

[11] *Id.*

[12] SIA Letter at 5.

[13] SIA Letter at 2, 5. The letter further recommended that, for firms choosing to obtain oral consent on an order-by-order basis, pre-trade disclosure be required in the form of a one-time comprehensive disclosure statement, and also that, for fiduciaries of non-institutional customers granted trading discretion who on their own qualify as an ''institutional account'' under the proposed rule, members be permitted to obtain the consent of such fiduciaries in the same manner as permitted for their institutional customers. *Id.*

[14] *See, e.g.*, Seidler Letter (''Having the client sign a disclosure document prior to each and every trade provides no benefit. It will confuse the client and will provide no additional information that is not available elsewhere.''); SIA Letter at 5 (''[N]o purpose is served by imposing onerous and impractical requirements on customers who do wish to consent to [trading on a net basis].'').

[15] SIA Letter at 4.

[16] Seidler Letter.

[17] SIA Letter at 4.

[18] *Id.* at 2, 4.

[19] *Id.* at 2.

[20] SIA Letter at 2.

[21] Milbank Letter.

would be appropriate under such circumstances, thus, NASD proposes that members that choose to obtain oral consent on an order-by-order basis must also explain the terms and conditions for handling the order to the institutional customer before each transaction, and provide the institutional customer with ''a meaningful opportunity to object to the execution of the transaction on a net basis.'' Additionally, members must document the customer's understanding of the terms and conditions of the order and the customer's consent on an order-by-order basis.

Regarding the comments relating to net transactions with non-institutional customers, NASD states it ''recognizes the burdens that result from having to obtain written consent on an order-by-order basis'' but believes the written disclosure and consent requirements are important to ensure that information regarding members' methods of compensation on transactions is provided to non-institutional customers, and that such customers agree to the methods of compensation. NASD does not believe that the market information available to customers will assist customers to determine whether a member is trading net or to understand the ramifications for the customer of trading net. Ultimately, NASD believes that benefits of requiring member disclosure and consent outweigh the related burdens to members.

NASD amended the proposal to allow a member, absent instructions to the contrary, to look to the institutional or non-institutional status of the fiduciary, rather than the underlying account, when deciding which method of disclosure and consent is allowable under the proposal.

NASD clarified that the scope of the proposal does not include orders received from member firms and other registered broker-dealers. As such, the proposal would not apply to orders received from members and other registered broker-dealers, nor would a receiving broker-dealer handling an order marked ''net'' routed to it from an originating broker-dealer have consent and disclosure obligations to the customer of the originating broker-dealer.[22] In both scenarios, the originating broker-dealer would be responsible for adhering to the requirements.

Finally, with regard to the possible inconsistency between net trading and NASD Rule 4632(d)(3)(A), NASD explained that the trade reporting requirements for net trades ''are not germane to this proposed rule change'' and that no changes to those requirements are needed.[23]

IV. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, the comment letters, and the NASD's response to the comments, and 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.[24] Specifically, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, protect investors and the public interest. The Commission believes that the proposed rule change should promote investor protection by codifying the requirement that members provide disclosure and obtain customer consent when trading on a net basis. The consent provided by non-institutional investors must evidence the customer's understanding of the terms and conditions of the order. The Commission also believes that the benefit to investors of requiring certain disclosures and obtaining customer consent when trading on a net basis outweighs the additional responsibilities placed on broker-dealers.

The Commission understands the commenters' assertion that the proposed rule change's disclosure and consent requirements were unnecessary for institutional customers, and is satisfied that NASD's modification of the proposal to require that members that choose to obtain oral consent on an order-by-order basis also explain the terms and conditions for handling the order to the institutional customer before each transaction and provide the institutional customer with an opportunity to object to the execution of the transaction on a net basis in a meaningful way to be a reasonable resolution of the issue. The Commission also believes it is reasonable and not unduly burdensome to require members to document a customer's understanding of the terms and conditions of the order and the customer's consent on an order-by-order basis.

The Commission believes that the modifications to the proposed rule change that NASD made in response to issues raised by the commenters are reasonable and designed to ease the burdens placed on members without sacrificing the benefits to investors contemplated by the proposal. For example, the Commission believes that (i) absent instructions to the contrary, it is reasonable for a member to look to the institutional or non-institutional status of the fiduciary, rather than the underlying account, when deciding which method of disclosure and consent is consistent with the rule, and (ii) NASD's decision to allow members the option of obtaining consent from institutional customers orally on an order-by-order basis, but not allowing a one-time disclosure under such circumstances, is consistent with investor protection and the public interest. Additionally, the Commission is satisfied that the clarifications NASD offered in response to the comments should provide sufficient guidance to allow members to satisfy the requirements of the rule. Finally, the Commission agrees with NASD that the trade reporting requirements for net trades contained in NASD Rule 4632(d)(3)(A) are not implicated in this proposed rule change.

The Commission finds good cause for approving Amendment No. 4 on an accelerated basis. Amendment No. 4 modifies the proposal in response to issues raised by the commenters. Because Amendment No. 4 raises no novel issues, and provides improvements to the proposed rule change in direct response to issues raised by the commenters, the Commission finds good cause for approving Amendment No. 4 before the 30th day since its publication in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[25], that the proposed rule change (SR–NASD–2004–135), as modified by Amendment Nos. 1, 2, 3 be, and it hereby is, approved, and Amendment No. 4 is approved on an accelerated basis.

[22] *Id.* at 10–11.

[23] *Id.* at 19.

[24] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Nancy M. Morris,

Secretary.

[FR Doc. E6–10718 Filed 7–7–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54086; File No. SR–NYSE–2006–24]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change To Lower the Minimum Display Size Requirement for Specialists To Maintain Undisplayed Reserve Interest at the Exchange Best Bid or Offer in the NYSE Hybrid Market

June 30, 2006.

On April 7, 2006, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 104(d)(i) to provide that specialists shall have the ability to maintain undisplayed reserve interest on behalf of the dealer account at the Exchange best bid or offer (''BBO''), provided at least 1,000 shares of dealer interest is displayed at that price, on the same side of the market as the reserve interest. This proposed rule change would lower the specialist's minimum display size requirement from at least 2,000 shares to at least 1,000 shares at the Exchange BBO and would conform the minimum display requirements for reserve interest for specialists and floor brokers.[3] In addition, the Exchange proposes to make a conforming change to Exchange Rule 104(d)(ii) to require that after an execution at the Exchange BBO that does not exhaust the specialist's interest, the specialist's displayed interest would be automatically replenished from its reserve interest, if any, so that at least a minimum of 1,000 shares is displayed (or whatever amount remains if the reserve interest is less than 1,000 shares). The proposed rule change was published for comment in the **Federal Register** on May 16, 2006.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NYSE permits floor brokers to maintain undisplayed reserve interest at the Exchange BBO, provided floor brokers display at least 1,000 shares. *See* NYSE Rule 70.20(c)(ii).

[4] *See* Securities Exchange Act Release No. 53780 (May 10, 2006), 71 FR 28398.

The Commission received no comments regarding the proposal.

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, and, in particular, with the requirements of Section 6(b) of the Act.[5] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [6] in that it is designed, among other things, to promote just and equitable principle of trade, 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.

The Commission previously approved NYSE's proposal to permit specialists and floor brokers to maintain undisplayed reserve interest at the Exchange BBO, provided that they display a minimum number of shares and yield priority to all displayed interest.[7] In the Hybrid Market Order, the Commission found it to be consistent with the requirements of the Act to allow specialists to place reserve interest in the Display Book system because it could increase the liquidity available for execution at the Exchange BBO. The Commission specifically noted that the minimum size requirement and the priority of displayed interest over undisplayed reserve interest should help ensure that market participants continue to have an incentive to display quotes or orders on NYSE. The Commission stated that, taken together, these requirements could promote additional depth at the Exchange BBO, while preserving incentives for investors to display limit orders. Since NYSE's proposal would retain the requirements that specialists display a minimum amount of size at the BBO in order to maintain undisplayed reserve interest and that undisplayed reserve interest yield priority to displayed interest at that price, the Commission finds that the proposed rule change remains consistent with the requirements of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–2006–24) is hereby approved.

[5] 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] *See* Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (''Hybrid Market Order'').

[8] 15 U.S.C. 78s(b)(2).

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

Nancy M. Morris,

Secretary.

[FR Doc. E6–10716 Filed 7–7–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54078; File No. SR–PCX–2005–54]

Self-Regulatory Organizations; NYSE Arca, Inc., Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Requiring OTP Holders and OTP Firms To Participate in the Federal Trade Commission's National Do-Not-Call Registry

June 30, 2006.

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 May 18, 2006, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') [3] filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On May 26, 2006, NYSE Arca filed Amendment No. 1 to the proposed rule change.[4] On June 21, 2006, NYSE Arca filed Amendment No. 2 to the proposed rule change.[5] 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

NYSE Arca proposes to amend NYSE Arca Rule 9.20. The proposed rule change would require OTP Holders and

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On March 6, 2006, the Pacific Exchange, Inc. filed a rule proposal, effective upon filing, to amend its rules to reflect these name changes: from Pacific Exchange, Inc. to NYSE Arca, Inc.; from PCX Equities, Inc. to NYSE Arca Equities, Inc.; from PCX Holdings, Inc., to NYSE Arca Holdings, Inc.; and from the Archipelago Exchange, L.L.C. to NYSE Arca, L.L.C. *See* File No. SR–PCX–2006–24 (March 6, 2006). This proposal has been amended to reflect these name changes.

[4] In Amendment No. 1, NYSE Arca partially amended the text of proposed amended NYSE Arca Rule 9.20 and made conforming and technical changes to the original filing.

[5] In Amendment No. 2, NYSE Arca made additional changes to the text of proposed amended NYSE Arca Rule 9.20 and to the original filing.