

under Section 303A(8) of the its Listed Company Manual, Nasdaq proposes to adopt an exception from the shareholder approval requirements for equity compensation plans that provide non-U.S. employees with substantially the same benefits as a comparable tax qualified, non-discriminatory employee benefit plan or parallel nonqualified plan that the issuer provides to its U.S. employees, but for features necessary to comply with applicable foreign tax law. The Commission believes that this change will conform Nasdaq's shareholder approval rule to that of the NYSE and will provide greater clarity for issuers regarding tax qualified, non-discriminatory employee benefit plans and parallel nonqualified plans for their non-U.S. employees.

Finally, Nasdaq proposes certain changes to its current shareholder approval rule to provide further clarity and conformity of its rule to the NYSE's shareholder approval rule. One such proposed change is replacing the terms "compensation committee" and "compensation committee comprised of a majority of independent directors" with the term "independent compensation committee."¹¹ This change makes Nasdaq's rules consistent with similar provisions in the NYSE's shareholder approval rules.

The Commission finds good cause for approving the proposed rule change and Amendment Nos. 1 and 2 thereto prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that Nasdaq has requested it to approve the proposed rule change, as amended, on an accelerated basis, because the proposed change, as amended, is intended to clarify existing Nasdaq rules. The Commission does not believe the Nasdaq's proposal, as amended, raises any new issues that the Commission has not already considered and addressed when approving similar provisions in the NYSE's shareholder approval rule.¹² The Commission believes that granting accelerated approval of the proposal, as amended, will allow the proposed changes to become immediately incorporated into Nasdaq's shareholder approval rule and will provide more consistency and

uniformity between the Nasdaq and NYSE's shareholder approval rules. Accordingly, the Commission believes that there is good cause, consistent with Sections 15A(b)(6) and 19(b)(2) of the Act,¹³ to approve the proposal and Amendment Nos. 1 and 2 thereto on an accelerated basis.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NASD-2003-130) and Amendment Nos. 1 and 2 thereto are approved on an accelerated basis.

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. 34-48599; File No. SR-NASD-2003-112]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Locked Markets in the Nasdaq InterMarket

October 7, 2003.

On July 18, 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") 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 amend NASD Rule 5263 which deals with locked and crossed markets in the Nasdaq InterMarket. On August 5, 2003, the Association submitted Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended, was published for comment in the **Federal Register** on September 3, 2003.⁴ The Commission received no comments on

the proposal. This order approves the proposed rule change, 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 proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁶ which requires, among other things, that NASD'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. The Commission believes that applying the same rule for locked and crossed markets that occur in the Intermarket Trading System ("ITS") Plan will eliminate the disparity that currently exists between the ITS Plan and the Nasdaq InterMarket.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-NASD-2003-112), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48637; File No. SR-NASD-2003-118]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Introduce Fees for Persons That Are Not NASD Members Using the Financial Information Exchange Protocol To Connect to Nasdaq

October 15, 2003.

On July 31, 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"), pursuant to Section 19(b)(1) of the Securities

¹¹ See also proposed NASD Rule 4350(c)(3) in Amendment No. 3 to File No. SR-NASD-2002-141 (filed on October 10, 2003) and Securities Exchange Act Release No. 47516 (March 17, 2003), 68 FR 14451 (March 25, 2003), relating to the composition of the compensation committee.

¹² See Securities Exchange Act Release No. 48108 (June 30, 2003), 68 FR 39995 (July 3, 2003) (order approving File Nos. SR-NYSE-2002-46 and SR-NASD-2002-140). The Commission notes that the NYSE provisions were noticed for a full 21-day comment period in the **Federal Register**.

¹³ 15 U.S.C. 78o-3(b)(6) and 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated August 4, 2003 ("Amendment No. 1").

⁴ See Securities Exchange Act Release No. 48412 (August 26, 2003), 68 FR 52433.

⁵ 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).

⁶ 15 U.S.C. 78o-3(b)(6).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to propose connectivity and testing fees for persons that are not NASD members wishing to use the Financial Information Exchange ("FIX") protocol to connect to Nasdaq. The proposed rule change was published for comment in the **Federal Register** on September 12, 2003.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

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.⁴ Specifically, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,⁵ which requires that the rules of the NASD provide 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.

The Commission finds that the proposed rule change is reasonably designed to accomplish these ends because the introduction of the FIX protocol as a means of accessing SuperMontage will expand the connectivity options available to Nasdaq's subscribers, and thereby enhance transparency in SuperMontage. In addition, the Commission notes that Nasdaq has represented that the proposed fees for FIX connectivity and testing are similar in structure and dollar amount to existing fees for computer-to-computer interface ("CTCI") and application programming interface ("API") connectivity. The Commission notes further that firms that already have dedicated CTCI circuits will be able to use FIX over their existing circuits, and therefore will not require that new circuits be installed. Firms that do not already have CTCI circuits may either obtain circuits to support both CTCI and FIX at the same prices that currently apply to CTCI, or may opt to obtain circuits to support FIX alone at a reduced price. The Commission believes that the proposed rule supports the efficient use of existing systems and ensures that the

charges associated with such use are allocated equitably.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change (SR-NASD-2003-118), be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48632; File No. SR-NYSE-2003-25]

Self Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Continuing Annual Fees for "Repackaged" Securities

October 15, 2003.

On August 28, 2003, the New York Stock Exchange, Inc. ("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 Section 902.02 of the NYSE's Listed Company Manual to implement certain changes to the continuing annual listing fees payable in connection with certain structured products called "repackaged" securities ("Repacks"), and to reinstate the Exchange's "15-year" policy with respect to previously listed Repacks.

The proposed rule change was published for comment in the **Federal Register** on September 10, 2003.³ The Commission received no comments on 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 exchange⁴ and, in particular, the requirements of Section 6 of the Act⁵ and the rules and regulations thereunder. The Commission finds

specifically that the proposed rule change is consistent with Section 6(b) of the Act,⁶ and in particular with Section 6(b)(4) of the Act,⁷ in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Commission believes that reinstatement of the "15-year" policy for Repacks listed prior to January 1, 2003, should eliminate the unintended consequence of imposing an economic burden on Repack trusts that do not have sufficient funding to pay continuing annual listing fees because the trust had relied on the policy. The Commission notes that, with respect to Repacks listed after January 1, 2003, the continuing annual listing fees will be applicable to Repacks at the time of listing and will remain in effect for the life of the security (*i.e.*, the "15-year" policy will not apply). The Commission believes that the proposed rule change should provide guidance as to applicable fees for present and future Repacks⁸ and should provide trust depositors with notice for Repacks listed after January 1, 2003 to reserve funding to pay continuing annual listing fees.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (File No. SR-NYSE-2003-25) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 48452 (September 5, 2003), 68 FR 53767.

⁴ 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).

⁵ 15 U.S.C. 78o-3(b)(5).

⁶ 15 U.S.C. 78(b)(2).

⁷ 17 CFR 200.30-3(a)(12).

⁸ 15 U.S.C. 78s(b)(1).

⁹ 17 CFR 240.19b-4.

¹⁰ See Securities Exchange Act Release No. 48429 (September 3, 2003), 68 FR 53411.

¹¹ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ The proposed rule change is effective from the date of this approval order and cannot be applied retroactively.

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).