

which are in its custody or control or for which it is responsible.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-GSCC-2002-07) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-26646 Filed 10-21-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48631; File No. SR-NASD-2003-127]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify the Fees for the Listing of Additional Shares Program and To Institute a Record-Keeping Fee for Certain Changes by Issuers

October 15, 2003.

I. Introduction

On August 11, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") submitted to 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 modify the fees for the listing of additional shares ("LAS") program and to institute a record-keeping fee for certain changes by issuers. The proposed rule change was published for comment in the **Federal Register** on September 9, 2003.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The purpose of the proposed rule change is to modify the fees for the LAS

program and to institute a record-keeping fee for certain changes by issuers in order to respond to the needs of Nasdaq. The LAS program involves notification and fee requirements for the issuance of additional shares. Specifically, an issuer must notify Nasdaq prior to a transaction that may implicate the corporate governance requirements and thereafter pay a fee that is based on the change in the issuer's total shares outstanding as reported in its periodic reports filed with the Commission. Nasdaq proposes to modify the LAS program fees in two ways. First, the minimum fee would be increased from \$2,000 to \$2,500 for issuances of between 50,000 and 250,000 additional shares.⁴ Second, the current quarterly cap of \$22,500 would be eliminated. The annual cap of \$45,000, however, would be retained.

In addition, Nasdaq also proposes to institute a \$2,500 record-keeping fee for certain changes made by issuers. Such a fee would be used to address the costs associated with revising Nasdaq's records when issuers engage in certain actions, including a change of name, a change in the par value or title of securities, or a voluntary change in trading symbol.

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities association,⁵ and, in particular, with the requirements of Section 15A⁶ of the Act. Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 15A(b)(5)⁷ of the Act because it is designed to 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 by modifying the fees for the listing of additional shares program and to institute a record-keeping fee for certain changes by issuers on an equal basis. Moreover, the Commission believes that the additional fees should

⁴ As under the current rules, there would be no fee for issuances of up to 49,999 per quarter.

⁵ 15 U.S.C. 78f(b). In approving this proposal, 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.

⁷ 15 U.S.C. 78o-3(b)(5).

assist the NASD in carrying out its self-regulatory responsibilities.⁸

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (File No. SR-NASD-2003-127) 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.

[FR Doc. 03-26587 Filed 10-21-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48627; File No. SR-NASD-2003-130]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to Amendments to Its Recently Adopted Rules Regarding Shareholder Approval for Stock Option or Purchase Plans or Other Equity Compensation Arrangements

October 14, 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 August 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" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. On October 2, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.³ On October

⁸ Nasdaq has represented to the Commission that the LAS program fees are used to fund issuer-related operations, including educational initiatives, issuer service initiatives, and surveillance measures. See Securities Exchange Act Release No. 31586 (December 11, 1992), 57 FR 60257 (December 18, 1992).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 2, 2003 ("Amendment No. 1"). In Amendment No. 1, Nasdaq replaced the terms "compensation committee" or "compensation committee

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 48413 (August 26, 2003), 68 FR 53209.

7, 2003, Nasdaq filed Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal, as amended, on an accelerated basis.

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

Nasdaq has filed with the Commission a proposed rule change relating to amendments to its recently adopted rules regarding shareholder approval for stock option or purchase plans or other equity compensation arrangements.

The text of the proposed rule change, as amended, is below. Proposed new language is in *italics*; proposed deletions are in brackets.

* * * * *

Rule 4350. Qualitative Listing Requirements for Nasdaq National Market and Nasdaq SmallCap Market Issuers Except for Limited Partnerships

(a)-(h) No change

(i) Shareholder Approval

(1) Each issuer shall require shareholder approval prior to the issuance of designated securities under subparagraph (A), (B), (C), or (D) below:

(A) when a stock option or purchase plan is to be established or materially amended or other equity compensation arrangement made or materially amended, pursuant to which options or stock may be acquired by officers, directors, employees, or consultants, except for:

(i) No change

(ii) tax qualified, non-discriminatory employee benefit plans (e.g., plans that meet the requirements of Section 401(a) or 423 of the Internal Revenue Code) or parallel nonqualified plans, provided such plans are approved by the issuer's *independent* compensation committee or a majority of the issuer's independent directors; or plans that merely provide a convenient way to purchase shares on the open market or from the issuer at fair market value; or

comprised of a majority of independent director" throughout NASD Rule 4350(i) and IM-4350-5 with the phrase "independent compensation committee." This proposed change is to conform Nasdaq's description of compensation committee to that of NYSE's description in Section 303A(8) of the NYSE's Listed Company Manual. In addition, in Amendment No. 1, Nasdaq requested accelerated approval of the proposed rule change, as amended.

⁴ See letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated October 7, 2003 ("Amendment No. 2"). In Amendment No. 2, Nasdaq made technical corrections to the proposed rule text.

(iii) No change

(iv) issuances to a person not previously an employee or director of the company, provided such issuances are approved by either the issuer's *independent* compensation committee [comprised of a majority of independent directors] or a majority of the issuer's independent directors. *Promptly following an issuance of any employment inducement grant in reliance on this exception, a company must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved.*

(B)-(D) No change

(2)-(6) No change

(j)-(l) No change

IM-4350-5. Shareholder Approval for Stock Option Plans or Other Equity Compensation Arrangements

Employee ownership of company stock can be an effective tool to align employee interests with those of other shareholders. Stock option plans or other equity compensation arrangements can also assist in the recruitment and retention of employees, which is especially critical to young, growing companies, or companies with insufficient cash resources to attract and retain highly qualified employees. However, these plans can potentially dilute shareholder interests. As such, Rule 4350(i)(1)(A) ensures that shareholders have a voice in these situations, given this potential for dilution.

Rule 4350(i)(1)(A) requires shareholder approval when a plan or other equity compensation arrangement is established or materially amended. For these purposes, a material amendment would include, but not be limited to, the following:

(1) any material increase in the number of shares to be issued under the plan (other than to reflect a reorganization, stock split, merger, spinoff or similar transaction);

(2) any material increase in benefits to participants, including any material change to: (i) permit a repricing (or decrease in exercise price) of outstanding options, (ii) reduce the price at which shares or options to purchase shares may be offered, or (iii) extend the duration of a plan;

(3) any material expansion of the class of participants eligible to participate in the plan; and

(4) any expansion in the types of options or awards provided under the plan.

While general authority to amend a plan would not obviate the need for shareholder approval, if a plan permits

a specific action without further shareholder approval, then no such approval would generally be required. However, if a plan contains a formula for automatic increases in the shares available (sometimes called an "evergreen formula"), or for automatic grants pursuant to a dollar-based formula (such as annual grants based on a certain dollar value, or matching contributions based upon the amount of compensation the participant elects to defer), such plans cannot have a term in excess of ten years unless shareholder approval is obtained every ten years. However, plans that *do not contain a formula and do not* impose a [no] limit on the number of shares available for grant would require shareholder approval of each grant under the plan. A requirement that grants be made out of treasury shares or repurchased shares will not alleviate these additional shareholder approval requirements.

As a general matter, when preparing plans and presenting them for shareholder approval, issuers should strive to make plan terms easy to understand. In that regard, it is recommended that plans meant to permit repricing use explicit terminology to make this clear.

Rule 4350(i)(1)(A) provides an exception to the requirement for shareholder approval for warrants or rights offered generally to all shareholders. In addition, an exception is provided for tax qualified, non-discriminatory employee benefit plans as well as parallel nonqualified plans [1] as these plans are regulated under the Internal Revenue Code and Treasury Department regulations. *An equity compensation plan that provides 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, are also exempt from shareholder approval under this section.*

Further, there is an exception for inducement grants to new employees because in these cases a company has an arm's length relationship with the new employees. Inducement grants for these purposes include grants of options or stock to new employees in connection with a merger or acquisition. The rule requires that such issuances must be approved by the issuer's *independent* compensation committee or a majority of the issuer's independent directors. *The rule further requires that promptly following an issuance of any employment inducement grant in reliance on this exception, a company*

must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved.

In addition, plans or arrangements involving a merger or acquisition do not require shareholder approval in two situations. First, shareholder approval will not be required to convert, replace or adjust outstanding options or other equity compensation awards to reflect the transaction. Second, shares available under certain plans acquired in acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exception applies to situations where the party which is not a listed company following the transaction has shares available for grant under pre-existing plans that meet the requirements of this Rule 4350(i)(1)(A). These shares may be used for post-transaction grants of options and other equity awards by the listed company (after appropriate adjustment of the number of shares to reflect the transaction), either under the pre-existing plan or arrangement or another plan or arrangement, without further shareholder approval, provided: (1) The time during which those shares are available for grants is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction, and (2) such options and other awards are not granted to individuals who were employed by the granting company or its subsidiaries at the time the merger or acquisition was consummated. Nasdaq would view a plan or arrangement adopted in contemplation of the merger or acquisition transaction as not pre-existing for purposes of this exception. This exception is appropriate because it will not result in any increase in the aggregate potential dilution of the combined enterprise. In this regard, any additional shares available for issuance under a plan or arrangement acquired in a connection with a merger or acquisition would be counted by Nasdaq in determining whether the transaction involved the issuance of 20% or more of the company's outstanding common stock, thus triggering the shareholder approval requirements under Rule 4350(i)(1)(C).

Inducement grants, tax qualified non-discriminatory benefit plans, and parallel nonqualified plans are subject to approval by either the issuer's independent compensation committee [comprised of a majority of independent directors,] or a majority of the issuer's independent directors. It should also be noted that a company would not be permitted to use repurchased shares to

fund option plans or grants without prior shareholder approval.

For purposes of Rule 4350(i)(1)(A) and IM-4350-5, the term "parallel nonqualified plan" means a plan that is a "pension plan" within the meaning of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. 1002 (1999), that is designed to work in parallel with a plan intended to be qualified under Internal Revenue Code Section 401(a), to provide benefits that exceed the limits set forth in Internal Revenue Code Section 402(g) (the section that limits an employee's annual pre-tax contributions to a 401(k) plan), Internal Revenue Code Section 401(a)(17) (the section that limits the amount of an employee's compensation that can be taken into account for plan purposes) and/or Internal Revenue Code Section 415 (the section that limits the contributions and benefits under qualified plans) and/or any successor or similar limitations that may thereafter be enacted. However, a plan will not be considered a parallel nonqualified plan unless: (i) It covers all or substantially all employees of an employer who are participants in the related qualified plan whose annual compensation is in excess of the limit of Code Section 401(a)(17) (or any successor or similar limitation that may hereafter be enacted); (ii) its terms are substantially the same as the qualified plan that it parallels except for the elimination of the limitations described in the preceding sentence; and, (iii) no participant receives employer equity contributions under the plan in excess of 25% of the participant's cash compensation.

[The term "parallel nonqualified plan" means a plan that is a "pension plan" within the meaning of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. 1002 (1999), that is designed to work in parallel with a plan intended to be qualified under Internal Revenue Code Section 401(a), to provide benefits that exceed the limits set forth in Internal Revenue Code Section 402(g) (the section that limits an employee's annual pre-tax contributions to a 401(k) plan), Internal Revenue Code Section 401(a)(17) (the section that limits the amount of an employee's compensation that can be taken into account for plan purposes) and/or Internal Revenue Code Section 415 (the section that limits the contributions and benefits under qualified plans) and/or any successor or similar limitations that may thereafter be enacted. However, a plan will not be considered a parallel nonqualified plan unless: (i) it covers all or substantially all employees of an employer who are participants in the

related qualified plan whose annual compensation is in excess of the limit of Code Section 401(a)(17) (or any successor or similar limitation that may hereafter be enacted); (ii) its terms are substantially the same as the qualified plan that it parallels except for the elimination of the limitations described in the preceding sentence; and, (iii) no participant receives employer equity contributions under the plan in excess of 25% of the participant's cash compensation.]

* * * * *

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 III 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

NASD Rule 4350(i)(1)(A) generally requires shareholder approval when a stock option or purchase plan is established or materially amended or other arrangement made pursuant to which options or stock may be acquired by officers, directors, employees or consultants. This Rule, however, provides that shareholder approval is not required for employment inducement grants made to new employees. Nasdaq believes that shareholder approval is not required for employment inducement grants because a company has an arm's length relationship with the new employees in these cases. Although shareholder approval is not required for employment inducement grants, they can only be made upon approval of the issuer's independent compensation committee or a majority of the issuer's independent directors. Nasdaq is proposing to also require an issuer to promptly disclose in a press release the material terms of employment inducement grants, including the recipients of the grants and the number of shares involved. Nasdaq believes that such disclosure would provide transparency to investors and reduce the potential for abuse of

this exception from the shareholder approval requirements.

Nasdaq further proposes to clarify IM-4350-5, which provides interpretative guidance regarding shareholder approval for stock option plans or other equity compensation arrangements. As previously mentioned, NASD Rule 4350(i)(1)(A) requires, in part, shareholder approval when a stock option or purchase plan is materially amended. IM-4350-5 currently provides that while general authority to amend a plan does not obviate the need for shareholder approval, if a plan permits a specific action without further shareholder approval, then no such approval would generally be required. Stock option plans that contain a formula for automatic increases in the shares available or for automatic grants pursuant to a dollar-based formula, however, cannot have a term in excess of ten years unless shareholder approval is obtained every ten years. Nasdaq proposes to amend IM-4350-5 to clarify that plans that do not contain a formula and do not impose a limit on the number of shares available for grant would require shareholder approval of each grant under the plan. This change will provide greater transparency regarding the shareholder approval requirements for material changes to stock option plans.

In addition, Nasdaq proposes to clarify IM-4350-5 with respect to tax qualified, non-discriminatory employee benefit plans and parallel nonqualified plans. These plans are excepted from the shareholder approval requirements because they are regulated under the Internal Revenue Code and Treasury Department regulations. Nasdaq proposes to clarify IM-4350-5 by stating that an equity compensation plan that provides 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, are also exempt from the shareholder approval requirements. This change will provide greater transparency for issuers regarding tax qualified, non-discriminatory employee benefit plans and parallel nonqualified plans for their non-U.S. employees.

Nasdaq also proposes to make a change to the terms "compensation committee" and "compensation committee comprised of a majority of independent directors" by replacing these terms with "independent compensation committee."

Lastly, Nasdaq proposes to move the text of footnote 1 of IM-4350-5 into the text of the IM in order to provide greater clarity of the IM in the NASD Manual.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with Section 15A of the Act,⁵ in general, and furthers the objectives of Section 15A(b)(6) of the Act,⁶ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Specifically, the proposed rule change will strengthen shareholder approval requirements with respect to stock option and purchase plans and provide greater transparency for investors as well as issuers and their counsel.

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.

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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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

⁵ 15 U.S.C. 78o-3.

⁶ 15 U.S.C. 78o-3(b)(6).

the principal office of the NASD. All submissions should refer to file number SR-NASD-2003-130 and should be submitted by November 12, 2003.

IV. Commission Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the Nasdaq proposal, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁷ The Commission finds that the Nasdaq proposal, as amended, is consistent with provisions of Section 15A of the Act,⁸ in general, and with Section 15A(b)(6) of the Act,⁹ in particular, in that the it is designed to, among other things, facilitate transactions in securities; to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles 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, and does not permit unfair discrimination among issuers.

The Commission notes that the changes and clarifications proposed by Nasdaq in this proposal are similar to provisions that are currently in the NYSE's rule relating to shareholder approval of equity compensation plans, Section 303A(8) of the NYSE's Listed Company Manual. In particular, the Commission notes that Nasdaq proposes to adopt a disclosure requirement similar to the NYSE's disclosure requirement that, promptly following the grant of any inducement award, companies must disclose in a press release the material terms of the award, including the recipient(s) of the award and the number of shares involved.¹⁰ The Commission believes that such a disclosure requirement should help to provide transparency to investors and reduce the potential for abuse of this exception for inducement grants.

In addition, the Commission notes that, similar to the NYSE's exemption

⁷ In approving the Nasdaq proposal, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78o-3.

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ This disclosure would, of course, be in addition to any information that is required to be disclosed in annual reports filed with the Commission. For example, Item 201(d) of Regulation S-K [17 CFR 229.201(d)] and Item 201(d) of Regulation S-B [17 CFR 228.201(d)] require issuers to present "in their annual reports on Form 10-K or Form 10-KSB—separate, tabular disclosure concerning equity compensation plans that have been approved by shareholders and equity compensation plans that have not been approved by shareholders.

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.

[FR Doc. 03-26588 Filed 10-21-03; 8:45 am]

BILLING CODE 8010-01-P

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

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.

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.

[FR Doc. 03-26589 Filed 10-21-03; 8:45 am]

BILLING CODE 8010-01-P

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

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).

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**.