

trade match fee would also apply to each linkage order. Lastly, if a linkage order is executed in whole or in part on RAES,⁵ a \$.30 per contract RAES fee would apply, and if any portion of a linkage order is manually handled, a \$.04 per contract floor brokerage fee is assessed.

2. Statutory Basis

The Exchange believes that the proposed rule change meets the requirement of section 6(b)(5) under the Act⁶ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

⁵ RAES is the automated execution system feature of the Exchange's order routing system that is owned and operated by the Exchange and that provides automated order execution and reporting services for options. See Exchange rule 6.8.

⁶ 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR-CBOE-2003-11 and should be submitted by April 15, 2003.

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. 34-47517; File No. SR-NASD-2002-158]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to the Establishment of a Nasdaq Official Closing Price and a Trade Report Modifier With Which To Identify That Price to the Public

March 18, 2003.

I. Introduction

On November 1, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), 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 establish a Nasdaq Official Closing Price ("NOCP"), and a trade report modifier with which to identify that price to the public. The proposed rule change was published for comment in the **Federal Register** on December 26, 2002.³ The Commission received seven comment letters regarding the proposal.⁴ Nasdaq responded to the commenters in an amendment which Nasdaq filed with the Commission on January 28, 2003⁵ and in a second response letter that Nasdaq filed with the Commission on March 7, 2003.⁶ This order approves the proposed rule change, and approves Amendment No. 1 on an accelerated basis.

II. Description of the Proposed Rule Change

A. Background

Nasdaq is proposing to establish an NOCP, and a trade report modifier with which to identify that price to the public. Nasdaq would program its proprietary systems to append the new

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 47022 (December 18, 2002), 67 FR 78840.

⁴ See letter from Brett W. Redfearn, Senior Vice President, Business Strategy and Equity Order Flow, American Stock Exchange LLC, to Jonathan G. Katz, Secretary, Commission, dated January 29, 2003 ("Amex Letter"); letter from Jeffrey T. Brown, Senior Vice President, Secretary and General Counsel, the Cincinnati Stock Exchange, Inc., to Mr. Jonathan G. Katz, Secretary, Commission, dated January 24, 2003 ("CSE Letter"); letter from Jon Kroeper, First Vice President and Associate General Counsel, Instinet Group Incorporated, to Mr. Jonathan G. Katz, Secretary, Commission, dated February 13, 2003 ("Instinet Letter"); letter from Donald J. Boteler, Vice President-Operations, Investment Company Institute, to Mr. Jonathan G. Katz, Secretary, Commission, dated January 15, 2003 ("Institute Letter"); letter from C. Thomas Richardson, Managing Director, Nasdaq Trading, and David Weisberger, Managing Director, U.S. Equities Models Trading, Salomon Smith Barney, to Mr. Jonathan Katz, Secretary, Commission, dated January 15, 2003 ("SSB Letter"); letter from Hendrik J. Kranenburg, Executive Vice President, Standard & Poor's, to Secretary, Commission, dated January 17, 2003 ("S&P Letter"); and letter from Scott W. Anderson, Associate Director and Counsel, Region Americas Legal, UBS Warburg LLC, to Jonathan G. Katz, Secretary, Commission, dated January 15, 2003 ("UBSW Letter").

⁵ See letter from Jeffrey S. Davis, Associate General Counsel, Nasdaq, to Alton S. Harvey, Office Head, Division of Market Regulation ("Division"), Commission, dated January 27, 2003 ("Amendment No. 1"). In Amendment No. 1, Nasdaq addresses the positive comments submitted with respect to the proposed rule change and proposes, in response to comments, to revise its original proposal to consider canceled or corrected trades submitted until 5:15:00 PM rather than 4:30:00 PM for the calculation of the NOCP.

⁶ See letter from Jeffrey S. Davis, Associate General Counsel, Nasdaq, to Alton S. Harvey, Office Head, Division, Commission, dated March 7, 2003 ("Second Response Letter").

⁷ 17 CFR 200.30-3(a)(12).