

system; and (4) 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 impose any inappropriate burden on competition.

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, it has become effective pursuant to section 19(b)(3)(A) of the Act¹⁰ and rule 19b-4(f)(6) thereunder.¹¹ At any time within 60 days of the filing of the 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 both the 5-day notice and the 30-day operative delay. The Commission believes waiving the 5-day notice and 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through December 1, 2003, and will allow Nasdaq and the Commission to analyze the issues related to customer limit order protection in a decimals environment. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹²

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 Nasdaq. All submissions should refer to file number SR-NASD-2003-89 and should be submitted by June 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47961; File No. SR-NYSE-2002-32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. Relating to the Addition of Interpretive Material to Several Exchange Rules

June 2, 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 12, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. On March 11, 2003, the Exchange filed Amendment No. 1 to the proposed rule

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

change.³ On May 21, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The proposed rule change, as amended, consists of the addition of long-standing interpretive material to several NYSE rules.

The text of the proposed rule change, as amended, is below. Proposed new language is in italics; proposed deletions are in brackets.⁵

Rule 72 Priority and Precedence of Bids and Offers

I. Bids.—Where bids are made at the same price, the priority and precedence shall be determined as follows:

Priority of First Bid

- (a) Except as provided in paragraph (b) below, when a bid is clearly established as the first made at a particular price, the maker shall be entitled to priority and shall have precedence on the next sale at that price, up to the number of shares of stock or principal amount of bonds specified in the bid, irrespective of the number of shares of stock or principal amount of bonds specified in such bid.

³ See letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 10, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange submitted a new Form 19b-4, which replaced the original filing in its entirety.

⁴ See letter from Darla C. Stuckey, Corporate Secretary, NYSE to Nancy J. Sanow, Assistant Director, Division, Commission, dated May 20, 2003 ("Amendment No. 2"). In Amendment No. 2, the Exchange corrected a typographical omission to the version of NYSE Rule 72(b) provided in Amendment No. 1. The Exchange also amended NYSE Rule 75 in order to reflect that Senior Floor Officials and Executive Floor Officials would be permitted to sit on panels to resolve disputes among members under certain circumstances. In addition, the Exchange amended NYSE Rule 91.10 to clarify that a member may reject a trade as soon as practicable under the prevailing circumstances after receiving an execution report that the member acted as principal. The Exchange also amended NYSE Rule 91.10 to clarify that disputes between members as to whether there was sufficient time to reject a trade would be resolved under NYSE Rule 75. In addition, NYSE Rule 91.50 was amended to make clear that a Floor Official's review of a pattern of a member's rejections does not compromise the unconditional right of the specialist to reject any trade where the specialist trades as principal.

⁵ The rule text provided herein includes corrections of typographical errors from the rule text that the NYSE submitted in Amendment No. 2 of the proposed rule change. Telephone conversation between Jeffery Rosenstruck, Senior Special Counsel, Market Surveillance, Rule Development, NYSE, and Tim Fox, Attorney, Division, Commission on May 22, 2003.