

the Exchange 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 August 4, 2003.⁴ The Commission received no comments on the proposed rule change. This Order approves the proposed rule change, as amended.

The Commission has reviewed carefully the CBOE's proposed rule change and finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,⁵ and with the requirements of section 6(b).⁶ In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,⁷ which requires, among other things, that the Exchange's rules be designed 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.

The Exchange is introducing a new "autofade" functionality which will cause one side of CBOE's disseminated quote to move to an inferior price when the quote is required to fade pursuant to the terms of the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage ("Linkage Plan")⁸ and/or when the size associated with the quote has been depleted by automatic executions (of both Linkage orders and non-Linkage orders). The Exchange has represented that in certain circumstances it might be necessary for the autofade functionality to move one side of the quote beyond the bid/ask parameters provided for in CBOE Rule 8.7(b)(iv), and therefore, has proposed a temporary exception to this Rule. Under the proposed rule change, until January 30, 2004, if the autofade functionality widens a quote beyond that permitted by CBOE Rule 8.7(b)(iv) for 30 seconds, a responsible broker or dealer disseminating that quote will not be considered in violation of the rule. However, if a quote remains outside of

the maximum width after the 30 second time period, the responsible broker or dealer disseminating that quote will be deemed in violation of CBOE Rule 8.7(b)(iv) for regulatory purposes.

The Commission believes that because the CBOE's autofade functionality will automate the process, it will help ensure that members comply with the Linkage Plan. For example, if a Participant receives a Principal Acting as Agent ("PA") order for a size greater than the Firm Customer Quote Size and does not execute the entirety of the PA Order within 15 seconds, the Participant is required to fade its quote. CBOE's autofade functionality will automate the process to ensure that members are in full compliance with this provision of the Linkage Plan.

Further, the proposed rule change will allow the Exchange to modify how quotes are handled following automatic executions. Currently, if a quote is exhausted via automatic executions, the Exchange may disseminate a size of "1" for a specified "reroute" period during which time the Exchange's Retail Automatic Execution System ("RAES") is disengaged. Autofade would eliminate any need to disengage the RAES system and disseminate a size of 1 contract at the same price. Once a quote is exhausted, autofade would move one side of the quote to a price that is one tick inferior to the NBBO (as described above).

The Commission believes that implementation of the autofade functionality will facilitate compliance with the Linkage Plan and will result in more efficient executions through RAES, as described above. Therefore, the Commission believes that it is appropriate, on a pilot basis, to suspend the requirements of CBOE Rule 8.7(b)(iv) to allow the autofade functionality to widen one side of a quote beyond that permitted by the Rule for 30 seconds.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-CBOE-2003-08), as amended, is approved on a pilot basis, to expire January 30, 2004.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48466; File No. SR-NASD-2003-125]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Modify NASD Rules 4614, 4619, 4620, 4624, 4625, 5106, 6350 and 11890

September 9, 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 8, 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") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On September 4, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.³ Pursuant to sections 19(b)(3)(A)(i) and (iii) of the Act⁴ and Rules 19b-4(f)(1) and (3) thereunder,⁵ Nasdaq has designated this proposal as one that, in part, constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule and that, in the remaining part, is concerned solely with the administration of the self-regulatory organization, which renders the proposed rule change effective upon the Commission's receipt of this filing. 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 the Substance of the Proposed Rule Change

The proposed rule change seeks to reflect the administrative shift of certain responsibilities under NASD Rules 4614, 4619, 4620, 4624, 4625, 5106, 6350 and 11890 from Nasdaq Market Operations to Nasdaq MarketWatch and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Alex Kogan, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated September 3, 2003 ("Amendment No. 1"). In Amendment No. 1, Nasdaq corrected rule text, clarified the application of Rule 19(b)(3)(A) to the proposed rule change, and clarified its description of NASD Rules 5265 and 11890.

⁴ 15 U.S.C. 78s(b)(3)(A)(i) and (iii).

⁵ 17 CFR 240.19b-4(f)(1) and (3).

³ See letter from Angelo Evangelou, Senior Attorney, Legal Division, CBOE, to Jennifer Colihan, Special Counsel, Division of Market Regulation, Commission, dated July 25, 2003 ("Amendment No. 1").

⁴ See Securities Exchange Act Release No. 48237 (July 28, 2003), 68 FR 45869.

⁵ In approving this rule proposal, the Commission notes that it has also 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).

⁷ 15 U.S.C. 78f(b)(5).

⁸ See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).