

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).