

In Amendment No. 2 to the Nasdaq Related Party Proposal, Nasdaq proposes to restore language that was deleted in the original proposal that clarifies that an issuer's review of all related party transactions must be for potential conflict of interest situations.³⁸¹ The Commission believes that these changes clarify the application of the proposal, and do not raise any new issues. In Amendment No. 3 to the Nasdaq Related Party Proposal, Nasdaq proposes that the Related Party Proposal become effective on January 15, 2004, in order to minimize disruption to existing issuer audit committees.³⁸² The Commission believes that this change will ease implementation of the rule.

In Amendment No. 2 to the Nasdaq Code of Conduct Proposal, Nasdaq proposes to renumber the paragraph in NASD Rule 4350(n) containing its provisions, add a cross-reference to the definition of a code of ethics promulgated under the Sarbanes-Oxley Act, and to require any waivers of a code of conduct to be disclosed in a Form 8-K within five days.³⁸³ The Commission believes that the amendment clarifies the application of the proposal, provides a specific manner in which the disclosure requirement must be fulfilled, and does not raise any new issues.

The Commission therefore believes that accelerated approval of NYSE Amendment Nos. 2 and 3, Amendment Nos. 2, 3, 4, and 5 to the Nasdaq Independent Director Proposal, Amendment Nos. 2 and 3 to the Nasdaq Related Party Proposal, Amendment Nos. 1, 2, and 3 to the Nasdaq Issuer Applicability Proposal, and Amendment No. 2 to the Nasdaq Code of Conduct Proposal is appropriate. Based on the above, the Commission finds, consistent with sections 6(b)(5)³⁸⁴ and 19(b)³⁸⁵ of the Exchange Act, that good cause exists to accelerate approval of NYSE Amendment Nos. 2 and 3; and, consistent with sections 15A(b)(6)³⁸⁶ and 19(b) of the Exchange Act, that good cause exists to accelerate approval of Amendment Nos. 2, 3, 4, and 5 to the Nasdaq Independent Director Proposal, Amendment Nos. 2 and 3 to the Nasdaq Related Party Proposal, Amendment Nos. 1, 2, and 3 to the Nasdaq Issuer Applicability Proposal, and Amendment

No. 2 to the Nasdaq Code of Conduct Proposal.

VII. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning NYSE Amendment Nos. 2 and 3, Amendment Nos. 2, 3, 4, and 5 to the Nasdaq Independent Director Proposal, Amendment Nos. 2 and 3 to the Nasdaq Related Party Proposal, Amendment Nos. 1, 2, and 3 to the Nasdaq Issuer Applicability Proposal, and Amendment No. 2 to the Nasdaq Code of Conduct Proposal, including whether these amendments are consistent with the Exchange 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 offices of the NYSE and Nasdaq. All submissions should refer to File No. SR-NYSE-2002-33, SR-NASD 2002-141, SR-NASD-2002-77, SR-NASD-2002-80, SR-NASD-2002-138 and SR-NASD-2002-139, and should be submitted by December 3, 2003.

VIII. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, SR-NYSE-2002-33, as amended, is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5) of the Exchange Act³⁸⁷; and that the proposed rule changes, SR-NASD 2002-141, as amended; SR-NASD-2002-77; SR-NASD-2002-80, as amended; SR-NASD-2002-138, as amended; and SR-NASD-2002-139, as amended, are consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities association, and, in particular, with section 15A(b)(6) of the Exchange Act.³⁸⁸

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,³⁸⁹ that the proposed rule changes, SR-NYSE-2002-33, as amended; SR-NASD 2002-141, as amended; SR-NASD-2002-77; SR-NASD-2002-80, as amended; SR-NASD-2002-138, as amended; and SR-NASD-2002-139, as amended, are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁹⁰

Jill M. Peterson,
Assistant Secretary.

Exhibit A

Comment Letters Relating to SR-NYSE-2002-33, the NYSE Corporate Governance Proposal

1. Letter from Timothy J. Adams, General Counsel, Labor Ready, Inc., to Jonathan G. Katz, Office of the Secretary, Commission, dated August 22, 2002 ("Labor Ready NYSE Letter").

2. Letter from Timothy Smith, Senior Vice President, Walden Asset Management, to Mr. Harvey Pitt, Chairman, Commission, dated August 23, 2002 ("Walden NYSE Letter").

3. Letter from Frank Curtis, Special Projects Officer, Railways Pension Trustee Company Limited, to Mr. H Pitt, Chairman, Commission, dated July 31, 2002 ("Railways Pension NYSE Letter").

4. Letter from Timothy H. Smith, President, and Alisa Gravit, Vice President, Social Investment Forum, to Mr. Harvey L. Pitt, Commission, dated August 6, 2002 ("Social Investment NYSE Letter").

5. Letter from Douglas H. Philipsen, Chairman, President and Chief Executive Officer, Independent Bank Corp., to Mr. Hardwick Simmons, Chairman and Chief Executive Officer, Nasdaq, dated August 26, 2002 ("Independent Bank Corp NYSE Letter").

7. Letter from Thomas F. Ray, Brookstreet Securities, to Mr. Harvey L. Pitt, Chairman, Commission, dated September 10, 2002 ("Brookstreet Securities NYSE Letter").

8. Letter from Valerie Heinonen, o.s.u., Consultant, Corporate Social Responsibility, Ursuline Sisters of Tildonk "U.S. Province, to Harvey Pitt, Chair, Commission, dated August 27, 2002 ("Ursuline Sisters NYSE Letter").

9. Letter from David M. Dobkin, CFP, First Affirmative Financial Network, Cambridge Investment Research, Inc. to Mr. Harvey L. Pitt, Chairman, Commission, dated September 6, 2002 ("Dobkin NYSE Letter").

10. Letter from Robert Walker, Vice President, SRI Policy and Research, Ethical Funds Inc., to Mr. Harvey L. Pitt, Chairman, Ms. Cynthia A. Glassman, Commissioner, Mr. Harvey J. Goldschmid, Commissioner, Mr. Roel C. Campos, Commissioner, Mr. Paul S. Atkins, Commissioner, Commission, dated September 6, 2002 ("Ethical Funds NYSE Letter").

11. Letter from Alastair Ross Goobey, Chairman of the Board, International

³⁸¹ See Amendment No. 2 to the Nasdaq Related Party Proposal.

³⁸² See Amendment No. 3 to the Nasdaq Related Party Proposal.

³⁸³ See Amendment No. 2 to the Nasdaq Code of Conduct Proposal.

³⁸⁴ 15 U.S.C. 78f(b)(5).

³⁸⁵ 15 U.S.C. 78s(b).

³⁸⁶ 15 U.S.C. 78o-3(b)(6).

³⁸⁷ 15 U.S.C. 78f(b)(5).

³⁸⁸ 15 U.S.C. 78o-3(b)(6).

³⁸⁹ 15 U.S.C. 78s(b)(2).

³⁹⁰ 17 CFR 200.30-3(a)(12).