mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds good cause for granting accelerated approval of the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Notice of the proposal indicated that the Commission would consider granting accelerated approval of the proposed rule change after a 15-day comment period.[9] The Commission received no comments on the proposal. Given the absence of comments, and Nasdaq's desire to eliminate this service while simultaneously offering to assist members in transitioning towards other methods of reporting trades to ACT, the Commission finds good case to approve the proposal on an accelerated basis.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NASD–2001–36), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17520 Filed 7–12–01; 8:45 am]

BILLING CODE 8010–01–M

[9] *See* footnote 5, *supra.*

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44526; File No. SR–NASD–00–30]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change To Include UTP Exchanges on a Voluntary Basis in the Nasdaq National Market Execution Service

July 6, 2001.

I. Introduction

On May 25, 2000, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned 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 include unlisted trading privilege exchanges (''UTP Exchanges'') in the automatic-execution function of the Nasdaq National Market Execution Service (''NNMS'') on a voluntary basis. The proposed rule change was published for comment in the **Federal Register** on June 5, 2000.[3] The Commission received one comment letter on the proposed rule change.[4] On July 6, 2001, the Association submitted Amendment No. 1 to the proposed rule change.[5] This order approves the proposed rule change. The Commission also is granting accelerated approval to Amendment No. 1 to the proposed rule change and is soliciting comment on Amendment No. 1 from interested persons.

II. Description of the Proposal

On January 14, 2000, the Commission approved the NNMS trading platform, which is scheduled to be phased-in on July 9, 2001.[6] As approved, the NNMS will be an automatic execution system that will serve as the primary trading platform for Nasdaq National Market securities. Under the NNMS rules, participation in the NNMS will be mandatory for Nasdaq market makers, and those market makers will be required to participate in the automatic-execution function of the system. In this proposed rule change, Nasdaq amended the NASD rules governing the NNMS to enable UTP Exchanges to participate in the automatic-execution function of the NNMS. Participation by UTP Exchanges in the NNMS, however, is voluntary.[7]

In the NNMS, the quotes of market makers, ECNs[8] (Full Participant ECNs and Order Entry ECNS), and UTP Exchanges are accessed in general price/time priority. As the NNMS was originally proposed and approved, UTP Exchanges would only receive orders through Nasdaq's SelectNet system. This was because UTP Exchanges have traditionally received orders against their quotes through the order-delivery functionality of SelectNet. Because SelectNet is an order-delivery system—as opposed to an automatic-execution system like the NNMS—UTP Exchanges that receive SelectNet orders must manually respond to the order to complete a trade.

After the Commission approved the NNMS, the Chicago Stock Exchange (''CHX'') and Nasdaq began discussion the possibility of the CHX participating in the automatic-execution functionality of the NNMS. Both Nasdaq staff and the CHX recognized that there cold be delays in processing orders if a UTP Exchange is alone at the inside and does not respond, within 90 seconds, to orders delivered to its quote.[9] This could occur if the UTP Exchange is experiencing system problems, is slow to process an order, or if there are delays in Nasdaq systems.

In light of the above, Nasdaq is proposing to permit UTP Exchanges to participate in the automatic-execution functionality of the NNMS. Participation by UTP Exchanges is voluntary. The proposed rule change also clarifies that if a UTP Exchange participates in the automatic-execution functionality of the NNMS, orders preferenced to the UTP Exchange's quotes mut meet the oversized requirement or other conditions of the rule. This is to limit the potential for dual liability for UTP Exchanges.

In addition, Nasdaq is proposing non-substantive rule changes to correct drafting errors in the original rule proposal to clarify that orders sent to quotes of Order Entry ECNs are not subject to the oversized order or the requirements in the rule, while orders sent to Full Participant ECNs are subject

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42847 (May 26, 2000), 65 FR 35690.

[4] *See* letter to Jonathan G. Katz, Secretary, SEC, from Gerald D. Putnam, Chief Executive Officer, Archipelago, L.L.C., dated October 25, 2000 (''Archipelago Letter'').

[5] *See* letter to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, from Thomas Moran, Associate General Counsel, Nasdaq, dated July 6, 2001 (''Amendment No. 1''). In Amendment No. 1, the Association amended the language of NASD Rule 4720 to reflect amendments recently published by the Commission. *See* Securities Exchange Act Release No. 44506 (July 3, 2001). In addition, the Association clarified that participation by UTP Exchanges in the NNMS is voluntary. Finally, the Association added language to clarify the continued use SelectNet upon implementation of NNMS.

[6] The NNMS trading platform was scheduled for implementation on July 10, 2000, prompting Nasdaq's request for approval of this proposed rule change by that date. On June 30, 2000, Nasdaq announced that it was postponing the implementation until the last quarter of 2000. Telephone conversation between Tom Moran, Associate General Counsel and John Malitzis, Assistant General Counsel, Office of the General Counsel, Nasdaq, and Heather Traeger, Attorney, Division of Market Regulation, SEC, on July 5, 2000. *See also* Securities 2000) (approving the new NNMS trading platform).

[7] *See* Amendment No. 1.

[8] For a description of the NNMS and the terms used in this order, *see* Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987 (January 25, 2000).

[9] While this is also a concern with ECNs, Nasdaq believes the concern is substantially smaller because ECNs are required to provide an automated response to SelectNet messages, and, in Nasdaq's experience, they generally respond in 5 seconds or less to orders presented to their quotes. UTP Exchanges are not under the same explicit obligation.

to these requirements. Further, the proposed rule change clarified the use of SelectNet for order sent to, or orders sent by, UTP Exchanges that do participant in the automatic functionality of the NNMS. Finally, the Association proposed a definition for ''UTP Exchange'' are eliminated the definition and references to ''UTP Specialists''.

Summary of Comments

The Commission received one comment letter on the proposed rule changes from Archipelago.[10] This commenter objected to the differing treatment of ECNs and UTP Exchanges in the NNMS. Specifically, the commenter whether it was consistent with the Act for the Association to permit ECNs to participate in the NNMS as either a Full Participate ECN or an Order Entry ECN, while only permitting UTP Exchanges the option of participating fully in the automatic execution functionality of the NNMS; *i.e.,* UTP Exchanges that choose to participate in NNMS must both route orders for automatic execution in the NNMS as well as provide automatic execution for orders routed to their quotes.

The commenter also argued that as a securities information processor (''SIP''), Nasdaq should remain neutral with respect to all market centers and that Nasdaq therefore should not be able to treat UTP Exchanges differently than NASD members.

The Commission notes that the Archipelago Letter was submitted prior to the Commission's SuperMontage Order,[11] which specifically addressed Archipelago's concerns.[12] In that order, the Commission stated that the NASD did not have to make accommodations for competing exchanges that are comparable to accommodations provided to its members. The Commission further noted that it believed that NASD should be able to provide access to a competing exchange that is equivalent to the access the competing exchange provides for NASD members. In addition, the Commission also addressed Nasdaq's role as an exclusive SIP.[13] Specifically, in the SuperMontage Order, the Commission directed the NASD and the UTP Exchanges to re-evaluate the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information For Exchange-Listed Nasdaq/National Market System Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''UTP Plan'').[14]

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act[15] and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission finds that the proposal is consistent with the requirements of sections 15A(b)(6)[16] of the Act because the proposed rule change is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in the regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 Commission believes that, by allowing UTP Exchanges to participate in the automatic-execution functionality of the NNMS, the proposed rule change will eliminate the potential for order queuing or for the system to stop processing orders when an UTP Exchange is alone at the best bid/best offer. The Commission notes that UTP Exchange participation in the auto-ex feature of NNMS is voluntary; these rules merely describe how a UTP Exchange that chooses to participate in the automatic execution function will need to operate.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The NASD plans to implement the NNMS system on July 9, 2001 and thus, accelerated approval is necessary to accommodate this timeframe. Since Amendment No. 1 clarifies the application of the proposed rule change, but did not change the intent of the proposal, the Commission believes that good cause exists, consistent with section 15A(b)(6)[17] and 19(b) of the Act[18] to accelerate approval of Amendment No. 1 to the proposed rule change.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether the amendment 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 the NASD. All submissions should refer to File No. SR–NASD–00–30 and should be submitted by August 3, 2001.

VI. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[19] that the proposed rule change, as amended, (SR–NASD–00–30), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44527; File No. SR–Phlx–2001–19]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Institute an Antitrust Compliance Policy

July 9, 2001.

On March 5, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act

[10] *See* note 4 *supra.*

[11] Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (''SuperMontage Order'').

[12] For the Commission's complete discussion, *see* SuperMontage Order, Section V.G.

[13] *See* SuperMontage Order, Section V.I.3.

[14] The Commission notes the UTP Plan participants are currently considering these issues.

[15] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78*o*–3(b)(6).

[17] 15 U.S.C. 78*o*–3(b)(5).

[18] 15 U.S.C. 78s(b).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).