

not only by firms, associated persons, and other market professionals, but also by non-professionals who receive the service through authorized vendors, including, for example, on-line brokerage firms. Prior to August 31, 2000, NQDS data was available through authorized vendors at a monthly rate of \$50 for professional and non-professional users alike. In August 2000, the NASD through Nasdaq filed a rule change to reduce from \$50 to \$10 the monthly fee that non-professional users pay to receive NQDS data. The Commission approved the pilot on August 22, 2000, and the fee reduction commenced on August 31, 2000 on a one-year pilot basis ("one-year fee-reduction pilot").

Nasdaq has consistently supported broad, effective dissemination of market information to public investors. Thus, Nasdaq is proposing to extend the one-year fee-reduction pilot for another year. The pilot would cover twelve months, commencing with September 2001 and expiring on August 31, 2002. Nasdaq notes that the one-year fee-reduction pilot reduced by 80% the fees that non-professionals paid for NQDS data prior to August 31, 2000. Continuing the reduction of NQDS for non-professional users demonstrates Nasdaq's continued commitment to individual investors and responds to the dramatic increase in the demand for real-time market data by non-professional market participants. In addition, NASD member firms often supply real-time market data to their customers through automated means. Thus, NASD member firms' customers will benefit from the continued fee reduction.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with the provisions of Sections 15A(b)(5) and 15A(b)(6) of the Act⁸ in that the proposal is designed to provide for the equitable allocation of reasonable fees among members and other persons using any facility or system which the Association operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers. In addition, Nasdaq believes that the fee reduction enhances the public's access to market data that is relevant to investors when they make financial decisions. Nasdaq further believes that the public's enhanced access to this data may encourage increased public participation in the securities markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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 changes 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ 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 accelerate the operative date. The Commission finds good cause to waive the 30-day operative waiting period, because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through August 31, 2002. For these reasons, the Commission finds good cause to waive the 30-day operative waiting period.¹¹

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 the NASD. All submissions should refer to file number SR-NASD-2001-56 and should be submitted by October 10, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44783; File No. SR-NYSE-2001-36]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend NYSE Rule 123

September 10, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 10, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change consists of amendments to NYSE Rule 123. The proposed rule text follows:

Additions are *italicized*, deletions are [bracketed].

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 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).

⁸ 15 U.S.C. 78o-3(b)(5) and (6).

Rule 123—Records of Order**(e) System Entry Required**

Except as provided in paragraphs .21 and .22 below, [N] no Floor member may represent or execute an order on the Floor of the Exchange unless the details of the order have been first recorded in an electronic system on the Floor. Any member organization proprietary system used to record the details of the order must be capable of transmitting these details to a designated Exchange data base within such time frame as the Exchange may prescribe. The details of each order required to be recorded shall include the following data elements, any changes in the terms of the order and cancellations, in such form as the Exchange may from time to time prescribe:

1. Symbol;
2. Clearing member organization;
3. Order identifier that uniquely identifies the order;
4. Identification of member or member organization recording order details;
5. Number of shares or quantity of security;
6. Side of market;
7. Designation as market, limit, stop, stop limit;
8. Any limit price and/or stop price;
9. Time in force;
10. Designation as held or not held;
11. Any special conditions;
12. System-generated time of recording order details, modification of terms of order or cancellation of order;
13. Such other information as the Exchange may from time to time require.

* * * * *

.20 Orders—For purposes of paragraph (e), an order shall be any written, oral or electronic instruction to effect a transaction.

.21 Orders not subject to paragraph (e) recording requirements—Any order executed by a specialist, Competitive Trader or Registered Competitive Market Maker for his or her own account and any orders which by their terms are incompatible for entry in an Exchange system relied on by a Floor member to record the details of the order in compliance with this Rule shall be exempt from the order entry requirements of paragraph (e) above.

.22 With respect to bona fide arbitrage order, a member may execute such order before entering the order into an electronic system as required by paragraph (e) above, but such member must enter such order into such electronic system no later than 60 seconds after the executive of such

order. With respect to an order to offset a transaction made in error, a member may, upon discovering such error within the same trading session, effect an offsetting transaction without first entering such order into an electronic system, but such member must enter such order into such electronic system no later than 60 seconds after the execution of such order.

.23[2] Time standards—Any member organization proprietary system used to record the details of an order for purposes of this rule must be synchronized to a commonly used time standard and format acceptable to the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change is being filed as a one-month pilot.

In December, 2000, the Exchange adopted requirements for the electronic capture of orders at the point of sale (front end systemic capture, or "FESC")³ and at the point of receipt (order tracking system, or "OTS"). The purpose of the requirements is to create a complete systemic record of orders handled by members and member organizations. These requirements are scheduled to become effective on September 10, 2001.

Due to the time sensitivity of bona fide arbitrage orders and orders to offset transactions made in error, the Exchange is proposing to carve out two exceptions to NYSE Rule 123(e). These orders may be initiated by a member on the Floor pursuant to SEC Rule 11a-1 and NYSE Rule 111, and a requirement that such orders be first entered into FESC may result in a lost arbitrage opportunity, or an additional loss to the member when covering an error. With

respect to bona fide arbitrage orders, a member may execute such orders before entering the order into FESC. However, such member must enter such orders into FESC no later than 60 seconds after the execution of such orders.

Similarly, with respect to an order to offset transactions made in error, a member, may, upon discovering such error within the same trading session, effect an offsetting transaction without first entering such order into FESC. However, such member must enter such order into FESC no later than 60 seconds after the execution of such order.

2. Statutory Basis

The Exchange believes that the basis under the Securities Exchange Act of 1934 (the "Act") for this proposed rule change is the requirement under Section 6(b)(5)⁴ that an Exchange have rules that are 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 believes that the proposed rule change is designed to accomplish these ends by strengthening the Exchange's ability to surveil the Floor activities of members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁵ and subparagraph (f)(6) of

³ See Securities Exchange Act Release No. 43689 (December 7, 2000), 65 FR 79145 (December 18, 2000) (Order approving amendments to NYSE Rule 123 providing for the systemic capture of order information on the Exchange floor).

⁴ 15 U.S.C. 78f(b)(5).

⁵ 15 U.S.C. 78s(b)(3)(A).

Rule 19b-4 thereunder.⁶ At any time within 60 days of the filing of the proposed rule change, as amended, 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.⁷

The Commission notes that under Rule 19b-4(f)(6)(iii),⁸ the proposal does not become operative for 30 days after date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing requirement and designate that the proposed rule change become operative immediately to permit implementation of NYSE Rule 123(e) as scheduled on September 10, 2001, which the NYSE believes is consistent with investor protection and the public interest. In particular, the Exchange believes the proposed rule change will enable members to execute bona fide arbitrage orders and orders to offset transactions made in error quickly without having to enter the order into the FESC. The proposed rule will still require that these be entered into the FESC within 60 seconds after the execution of the respective order.

The Commission believes that it is consistent with the protection of investors and the public interest to waive the five-day pre-filing requirement and designate the proposal immediately operative.⁹ Accelerating the operative date and waiving the pre-filing requirement will permit the Exchange to implement NYSE Rule 123 without undue delay. For this reason, the Commission finds good cause to designate that the proposal become operative immediately.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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 10549-0609.

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 NYSE. All submissions should refer to File No. SR-NYSE-2001-36 and should be submitted by October 10, 2001.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-23307 Filed 9-18-01; 8:45 am]

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UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: (A) Notice of policy priorities for amendment cycle ending May 1, 2002; (B) Request for comment on the possible formation of an ad hoc advisory group on organizational guidelines; and (C) Request for comment on the possible formation of an ad hoc advisory group on issues related to the impact of the sentencing guidelines on Native Americans in Indian Country.

SUMMARY: (A) Policy Priorities.—In July 2001, the Commission published a notice of possible policy priorities for the amendment cycle ending May 1, 2002. See 66 FR 128 (July 3, 2001). After reviewing public comment received pursuant to this notice, the Commission has identified its policy priorities for the upcoming amendment cycle. The Commission hereby gives notice of these policy priorities.

(B) Issues Related to the Organizational Guidelines.—The Commission recently has received several letters from individuals and organizations suggesting that the Commission consider proposed changes to the guidelines in Chapter Eight (Sentencing of Organizations). (These

letters are available at the Commission for public review.) In response, the Commission hereby requests comment on the scope, potential membership, and possible formation of an ad hoc advisory group on the organizational sentencing guidelines to consider any viable methods to improve the operation of these guidelines.

(C) Issues Related to the Impact of Federal Sentencing Guidelines on Native Americans in Indian Country.—In June, 2001, the Commission held a hearing in Rapid City, South Dakota, for the purpose of receiving information from interested parties about the impact of the federal sentencing guidelines on Native Americans sentenced in Federal court for offenses traditionally prosecuted under state law. As a result of suggestions made at that hearing and subsequent written submissions, the Commission hereby requests comment on the scope, potential membership, and possible formation of an ad hoc advisory group to consider any viable methods to improve the operation of the federal sentencing guidelines in all areas that have significant Native American Indian populations.

DATE: Public comment should be received by the Commission not later than November 6, 2001.

ADDRESSES: Send comment to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2-500, South Lobby, Washington, DC 20002-8002. Attn: Public Affairs.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502-4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission, an independent commission in the judicial branch of the United States Government, is authorized by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal courts. Section 994 also directs the Commission periodically to review and revise promulgated guidelines and authorizes it to submit guideline amendments to Congress not later than the first day of May each year. See 28 U.S.C. 994(o), (p).

(A) Policy Priorities for Amendment Cycle May 1, 2002.—As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, the Commission has identified certain priorities as the focus of its policy development work, including possible amendments to guidelines, policy statements, and commentary, for the amendment cycle ending May 1, 2002. While the Commission intends to address these

⁶ 17 CFR 240.19b-4(f)(6)(iii).

⁷ The Commission notes, however, this proposed rule change has been filed as a one-month pilot.

⁸ 17 CFR 240.19b-4(f)(6).

⁹ For purposes 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).

¹⁰ 17 CFR 200.20-3(a)(12).