

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 CHX included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

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

1. Purpose

On April 6, 2001, the Commission approved, on a pilot basis through July 9, 2001, a pilot rule interpretation (CHX Article XXX, Rule 2, Interpretation and Policy .06 "Trading in Nasdaq/NM Securities in Subpenny Increments")⁵ that requires a CHX specialist (including a market maker who holds customer limit orders) to better the price of a customer limit order in his book which is priced at the national best bid or offer ("NBBO") by at least one penny if the specialist determines to trade with an incoming market or marketable limit order. The pilot was extended on three occasions and is now due to expire on April 15, 2002.⁶ The CHX now proposes to extend the pilot through September 30, 2002. The CHX proposes no other changes to the pilot, other than extending it through September 30, 2002.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).⁷ In particular, the CHX believes the proposal is consistent with Section 6(b)(5) of the Act⁸ in that it is designed to promote just and equitable principles of trade, to remove impediments to, and to perfect the

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

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change 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.

The Exchange has requested that the Commission waive both the 5-day notice and 30-day pre-operative requirements contained in Rule 19b-4(f)(6).¹¹ The Commission finds good cause to designate the proposal both effective and operative upon filing with the Commission 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 September 30, 2002, and allow the Commission to further study the trading of Nasdaq/NM securities in subpenny increments. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.¹²

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ *Id.*

¹² For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on

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 CHX. All submissions should refer to file number SR-CHX-2002-10 and should be submitted by May 13, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45763; File No. SR-NASD-2002-08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to the Permanent Establishment of a Minimum Quotation Increment for Nasdaq Securities Quoting in Decimals

April 16, 2002.

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 January 15, 2002, 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 ("SEC" or

efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁵ See Securities Exchange Act Release No. 44164 (April 6, 2001), 66 FR 19263 (April 13, 2001) (SR-CHX-2001-07).

⁶ See Securities Exchange Act Release No. 44535 (July 10, 2001), 66 FR 37251 (July 17, 2001) (SR-CHX-2001-15); Securities Exchange Act Release No. 45062 (November 15, 2001), 66 FR 58768 (November 23, 2001) (SR-CHX-2001-21); Securities Exchange Act Release No. 45386 (February 1, 2002), 67 FR 6062 (February 8, 2002) (SR-CHX-2002-02).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On March 28, 2002, Nasdaq amended the proposed rule change.³ 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 Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 4613 to permanently adopt a \$0.01 minimum quotation increment for Nasdaq securities as required under the Decimals Implementation Plan for the Equities and Options Markets (“Implementation Plan” or “Plan”)⁴ submitted to the Commission on July 26, 2000.⁵

The text of the proposed rule change, as amended, appears below. New text is in italics; deletions are in brackets.

* * * * *

4613. Character of Quotations

(a) Two-Sided Quotations

(1) No change.

(A) No change.

(B) Minimum Price Variation for Decimal-based Quotations—The minimum quotation increment for *Nasdaq* securities authorized for decimal pricing [as part of the SEC-approved Decimals Implementation Plan for the Equities and Options Markets] shall be \$0.01. Quotations failing to meet this standard shall be rejected.

(b) through (e) No change.

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

In its filing with the Commission, Nasdaq 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

On July 26, 2000,⁶ the NASD, jointly with other self-regulatory organizations, submitted to the Commission the Implementation Plan.⁷ As part of the Plan, the NASD committed to file with the Commission a proposal to permanently establish a minimum quotation increment for Nasdaq securities quoting in decimals.⁸ This filing seeks to establish that minimum quotation increment at \$0.01 for Nasdaq issues. The proposed rule change would permit Nasdaq to continue to display and disseminate quotations in Nasdaq securities in decimal-based increments to two places beyond the decimal point (*i.e.*, to the penny). This proposed rule change again informs market participants that decimal quotations submitted to Nasdaq that do not comport with the penny minimum quotation increment standard will be rejected by Nasdaq systems.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,⁹ in general, and with section 15A(b)(6) of the Act,¹⁰ in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

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

Nasdaq does not believe that the proposed rule change will result in 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

No written comments were solicited or received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which Nasdaq consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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 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 filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2002-08 and should be submitted by May 13, 2002.

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

Margaret H. McFarland,
Deputy Secretary.

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³ See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (“Division”), Commission, dated March 28, 2002 (“Amendment No. 1”). In Amendment No. 1, Nasdaq made technical corrections to the proposed rule text.

⁴ See letter from Dennis L. Covelli, Vice President, New York Stock Exchange, Inc., to Annette Nazareth, Director, Division, Commission dated July 25, 2000.

⁵ This date was changed from July 24, 2000, to reflect the actual date the Plan was submitted to the Commission. Telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and Frank N. Genco, Attorney, Division, Commission, on January 31, 2002.

⁶ See supra note 5.

⁷ See supra note 4.

⁸ Nasdaq currently operates using this same one-penny minimum quotation standard. See Securities Exchange Act Release No. 43876 (January 23, 2001), 66 FR 8251 (January 30, 2001) (SR-NASD-2001-07).

⁹ 15 U.S.C. 78o-3.

¹⁰ 15 U.S.C. 78o-3(b)(6).

¹¹ 17 CFR 200.30-3(a)(12).