

to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change that would require all open orders priced in fractions in NASD member firms' systems on the evening before that security is to commence quoting in decimals to be converted to decimals. Notice of the proposed rule change appeared in the **Federal Register** on February 6, 2001.<sup>3</sup> The Commission received no comments on the proposed rule change. This order grants accelerated approval of the proposed rule change.

## II. Description of the Proposal

Pursuant to the Decimals Implementation Plan for the Equities and Options Markets ("Implementation Plan"), which was submitted to the Commission on July 24, 2000, the NASD is to fully convert the Nasdaq market to decimal pricing no later than April 9, 2001. Before full implementation, Nasdaq will begin a decimal pricing pilot program for 10-15 Nasdaq issues on March 12, 2001, and add a second decimal phase-in of approximately 100+ additional Nasdaq securities on March 26, 2001.

Nasdaq's proposal would adopt a mandatory conversion rule for all open orders in Nasdaq securities that are priced in fractions and reside in the internal systems of NASD member firms on the evening prior to the first day a particular security commences quoting in decimals. Under the proposal, all open orders, including those with price qualifiers such as "Do Not Reduce" ("DNR") and "Do Not Increase" ("DNI"), priced in fractions that reside in a firm's internal system on the evening before the start of decimal pricing, will be converted as follows: (1) The price of all open Buy Orders (including "Good-til-Canceled" ("GTC"), "Good-til-Executed" ("GTX"), and Buy Stop and Buy Stop Limits) priced in fractions will be converted to their decimal equivalent and "rounded down" to the nearest \$0.01; and (2) the price of all open Sell Orders (GTC, GTX, Sell Stop and Sell Stop Limits) priced in fractions will be converted to their decimal equivalent and "rounded up" to the nearest \$0.01. Examples of fractional buy and sell conversions were provided in the notice for SR-NASD-01-10.<sup>4</sup>

Under the proposal, market participants would be free to accept

decimal-priced orders for any number of values beyond the decimal point as they deem appropriate after the conversion to decimals. Nasdaq will continue to require that firms round orders to two decimal places before submitting them to Nasdaq for display in the quote montage. Likewise, the Automated Confirmation Transaction Service ("ACT") will only accept trade reports up to six places beyond the decimal point and disseminate decimal priced transaction reports to four decimal points to the tape.

## III. Discussion

The Commission has reviewed carefully the proposed rule change, and finds that it is consistent with the Act and the rules and regulations promulgated thereunder.<sup>5</sup> Specifically, the Commission finds that approval of the proposed rule change is consistent with section 15A(b)(6)<sup>6</sup> of the Act, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and 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 uniform open fractional order conversion methodology may aid in structuring an orderly transition from fractional to decimal pricing. The Commission finds that Nasdaq's proposal is narrowly tailored to require only the conversion of open fractional orders that reside in the internal systems of NASD member firms on the evening prior to the first day a particular security commences quoting in decimals. After the conversion, market participants will be free to accept orders priced in decimals for any number of values beyond the decimal point. The Commission believes Nasdaq's approach is reasonable, and that requiring such conversion may help to reduce investor confusion, reduce discrepancies in reconciliation, and in general, provide for a more orderly transition to decimal pricing.

The Commission finds good cause for approving the proposed rule change prior to the 30th date after the date of publication of notice of the filing 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.<sup>7</sup> The Commission received no comments on the proposal. Given the absence of comments, and Nasdaq's resolve to begin decimal pricing in certain Nasdaq securities on March 12, 2001, the Commission finds good cause to approve the proposal on an accelerated basis to ensure adequate notice of the rule in advance of March 12, 2001.

## IV. Conclusion

For the above reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, in general, and with section 15A(b)(6),<sup>8</sup> in particular.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-NASD-01-10), be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43998; File No. SR-NASD-01-08]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments to Rule 10301 of the Code of Arbitration Procedure To Prohibit Terminated, Suspended, Barred or Otherwise Defunct Firms From Enforcing Predispute Arbitration Agreements in the NASD Arbitration Forum

February 23, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 25, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and

<sup>7</sup> See Securities Exchange Act Release No. 43906 (January 30, 2001), 66 FR 9115 (February 6, 2001).

<sup>8</sup> 15 U.S.C. 78o-3(b)(6)

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 43906 (January 30, 2001), 66 FR 9115 (February 6, 2001).

<sup>4</sup> Securities Exchange Act Release No. 43906 (January 30, 2001), 66 FR 9115 (February 6, 2001).

<sup>5</sup> 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).

<sup>6</sup> 15 U.S.C. 78o-3(b)(6).

III below, which Items have been prepared by NASD Dispute Resolution. On February 15, 2001, NASD Dispute Resolution filed Amendment No. 1 to the proposal.<sup>3</sup> On February 22, 2001, NASD Dispute Resolution filed Amendment No. 2 to the proposal.<sup>4</sup> 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

NASD Dispute Resolution is proposing to amend Rule 10301 of the Code of Arbitration of the NASD, to prohibit a firm that has been terminated, suspended, or barred from the NASD, or that is otherwise defunct, from enforcing a predispute arbitration agreement against a customer in the NASD arbitration forum. Below is the text of the proposed rule change. Proposed new language is in italics.

\* \* \* \* \*

#### 10301. Required Submission

(a) Any dispute, claim, or controversy eligible for submission under the Rule 10100 Series between a customer and an active member and/or associated person arising in connection with the business of such member or in connection with the activities of such associated persons shall be arbitrated under this Code, as provided by any duly executed and enforceable written agreement or upon the demand of the customer. *A claim involving a member in the following categories shall be ineligible for submission to arbitration under the Code unless the customer agrees in writing to arbitrate the claim after it has arisen:*

1. *A member whose membership is terminated, suspended, canceled, or revoked;*
2. *A member that has been expelled from the NASD; or*
3. *A member that is otherwise defunct.*

(b)–(d) Unchanged.

\* \* \* \* \*

<sup>3</sup> See letter from Laura Leedy Gansler, Counsel, NASD Dispute Resolution, to Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated February 14, 2001 ("Amendment No. 1"). In Amendment No. 1, NASD Dispute Resolution made changes to the description of the rule change to more accurately describe its purpose.

<sup>4</sup> See letter from Laura Leedy Gansler, Counsel, NASD Dispute Resolution, to Florence Harmon, Senior Special Counsel, Division, Commission, dated February 21, 2001 ("Amendment No. 2"). In Amendment No. 2, NASD Dispute Resolution made further changes to the description of the rule change to more accurately describe its purpose.

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

In its filing with the Commission, NASD Dispute Resolution 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. NASD Dispute Resolution 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

In October 1998, the Government Accounting Office ("GAO") undertook a study of the securities industry arbitration process, focusing on the number of unpaid arbitration awards. In its report, *Securities Arbitrations: Actions Needed to Address Problem of Unpaid Awards* ("GAO Report"), the GAO found that a significant percentage of the awards favorable to customers that were issued in 1998 were unpaid. The majority of unpaid awards involved arbitration cases against firms that the NASD had terminated from membership for serious violations of the federal securities laws and NASD rules, or that had filed for bankruptcy. In fact, investors collect their awards in well over 90 percent of the NASD cases involving active firms.

The GAO noted that the NASD takes aggressive action to address complaints about nonpayment of awards. However, in response to the recommendations in the GAO Report, NASD Dispute Resolution has taken the following additional steps to track and address non-payment. In NASD *Notice to Members* 00–55, published August 10, 2000, NASD Dispute Resolution introduced a new system of monitoring and tracking compliance with arbitration awards by members and associated persons. On September 18, 2000, NASD Dispute Resolution began asking Claimants to notify it if a member or associated person has not paid the arbitration award within 30 calendar days of receipt of the award. In addition, member firms are now required to notify NASD Dispute Resolution in writing within 30 days of receipt of an award that they or their associated persons have paid or otherwise complied with the award, or to identify a valid basis for non-payment. NASD Dispute Resolution

has agreed to provide the Commission with quarterly reports on the results of this process. These steps will enable the NASD to institute suspension proceedings promptly when appropriate, and will prevent unnecessary regulatory effort in cases in which the award is the subject of a pending motion to vacate or there is another valid basis for non-payment.

Even in light of NASD Dispute Resolution's vigorous efforts to ensure payment of awards, the GAO Report highlighted the fact that customers in arbitration cases involving terminated or suspended members face a significantly higher risk of non-payment than in cases involving active members. While non-payment of awards by terminated or suspended members is beyond the control of NASD Dispute Resolution, NASD Dispute Resolution recognizes that it may be inappropriate to permit terminated or suspended members to require customers who have claims against them to arbitrate such claims in the NASD forum when an arbitration award may be unenforceable against the terminated or suspended member. In such cases, NASD Dispute Resolution believes that even customers who have signed a predispute arbitration agreement should be able to seek relief in court, where they could more directly avail themselves of any judicial remedies available under state law, including those that might prevent the dissipation of assets. Due to the time required for the appointment of arbitrators, and the delay inherent in the process of converting an arbitration award into an enforceable judgment, the ability to go directly to court to seek relief may save customers precious time in cases in which the dissipation of assets is a threat.

Therefore, NASD Dispute Resolution is proposing to amend Rule 10301 of the Code of Arbitration Procedure to prohibit a firm that has been terminated, suspended, or expelled from the NASD, or that is otherwise defunct, from enforcing a predispute arbitration agreement against a customer in the NASD forum. As a corollary to this rule change, NASD Dispute Resolution will advise customers making claims against a terminated or suspended member of the member's status, so that the customers can decide whether to proceed in arbitration, to file their claim in court, or to take no action.

The proposed rule change precludes terminated, suspended, barred, or otherwise defunct members from requiring a customer to arbitrate in the NASD forum under Rule 10301, unless the customer agrees in writing to arbitrate the claim in the NASD forum

after the claim has arisen. The proposed rule change is similar to Rule 10301(d) of the Code of Arbitration Procedure, which provides that class actions are ineligible for arbitration in the NASD forum. It is also similar in principle to New York Stock Exchange ("NYSE") Rule 600(f), which makes employment discrimination claims ineligible for arbitration in the NYSE forum unless the parties agree to arbitrate after the claim has arisen.

## 2. Statutory Basis

NASD Dispute Resolution believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>5</sup> which requires, among other things, that the Association's rules must 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. Because terminated, suspended, barred or otherwise defunct firms have a significantly higher incidence of non-payment of arbitration awards than do active firms, NASD Dispute Resolution believes that the proposed rule change will protect investors and the general public by giving customers greater flexibility to seek remedies against such firms.

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

NASD Dispute Resolution 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, as amended.

### *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

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 the self-regulatory organization 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 it 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 the file number in the caption above and should be submitted by March 26, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43993; File No. SR-NYSE-01-03]

### **Self-Regulatory Organizations: Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Supplementary Material to Rules 451 and 465 Concerning Householding**

February 22, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 7, 2001, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described

in Items I and II below, which Items have been prepared by the Exchange. On February 14, 2001, the NYSE submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> 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**

Many listed company proxy statements and annual reports are mailed to beneficial holders of the company's stock by brokerage firms. The practice of sending only one proxy statement or annual report to multiple beneficial holders with a single address is known as "householding." A newly effective Commission rule now permits householding by implied consent with certain appropriate safeguards.<sup>4</sup> The Exchange proposes to amend its own rules to align them with the Commission's recent amendments.<sup>5</sup> The NYSE's proposal would permit members to household annual reports, interim reports, proxy statements and other material so long as they comply with applicable Commission rules, including Rule 14b-1 and under the Act.<sup>6</sup>

### **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 Exchange 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 III below. The Exchange 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

Rules of the Commission and the Exchange require member organizations

<sup>3</sup> Letter from Darla C. Stuckey, Assistant Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, SEC, dated February 12, 2001 ("Amendment No. 1"). In Amendment No. 1, the Exchange corrected an error in the purpose section of the Form 19b-4 filing.

<sup>4</sup> See Securities Act Release No. 7912 (October 27, 2000), 65 FR 65736 (November 2, 2000) ("Householding Release").

<sup>5</sup> *Id.*

<sup>6</sup> 17 CFR 240.14b-1.

<sup>6</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>5</sup> 15 U.S.C. 78o(b)(6).