is a party to the trade.[7] The Amex now proposes to decrease the fee to $0.27. Options clearance and floor brokerage fees for the specialist and ROTs will remain unchanged at $0.04 and $0.03 per contract side, respectively. The Amex believes that the proposed decrease is necessary to allow for the application of $0.40 marketing fee on QQQ options.

2. *Statutory Basis.* The Amex believes that the proposed rule change is consistent with section 6(b) of the Act [8] in general and furthers the objectives of section 6(b)(4) of the Act [9] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities.

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.

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

The Amex did not solicit or receive any comments with respect to the proposed rule change.

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

The Amex has designated the foregoing proposed rule change as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act [10] and Rule 19b–4(f)(2) thereunder.[11] Accordingly, the proposal has become effective immediately upon filing with the Commission. At any time within 60 days after the filing of this proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

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 submission 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 Amex. All submissions should refer to File No. SR–Amex–01–12 and should be submitted by April 27, 2001.

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

Margaret H. McFarland,

Deputy Secretary.

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[7] The term public customer shall have the meaning set forth in Amex Rule 958A (*i.e.,* a non-broker-dealer).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44142; File No. SR–NASD–01–03]

Self, Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Elimination of the Interval Delay Between Executions for Initial Public Offerings and Secondary Offerings in the Nasdaq National Market Execution System

April 2, 2001.

I. Introduction

On January 5, 2001, 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 ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 10b–4 thereunder,[2] a proposed rule change, on a six-month pilot basis, to amend NASDd Rule 4710, ''Participant Obligations in NNMS,'' to eliminate the internal delay between executions against the same market maker at the same price level during the first day of trading of the securities of initial public offerings (''IPOs'') and secondary offerings in the Nasdaq National Market Execution System (''NNMS'' or ''SuperSOESS'').[3] On January 31, 2001, the NASD filed Amendment No. 1 to the proposed rule change.[4] The proposed rule change Amendment No. 1 were published for comment in the **Federal Register** on February 21, 2001.[5] No comments were received regarding the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

The rules governing Nasdaq's Small Order Execution System (''SOES'') currently establish a delay of 17 seconds (15 seconds for quote management and two seconds for system processing) between executions against the same market maker in the same security at the same price level. This delay will be reduced to five seconds (plus two seconds system processing time) for the majority of Nasdaq NMS securities when Nasdaq implements SuperSOES. In response to market participants' concerns that significant order flow could potentially produce queuing within the the system, Nasdaq filed a rule change with the Commission in December 2000 to reduce the interval delay between executions in Nasdaq 100 Index securities to two seconds, commencing on the date that Nasdaq launches SuperSOES.[6]

Nasdaq filed the current proposal to address similar queuing concerns raised by market participants in connection with the rapid flow of orders accompanying IPOs and secondary

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

[2] 17 CFR 240.19b–4.

[3] On January 14, 2000, the Commission approved the creation of SuperSOES, a new platform for trading Nasdaq National Market (''NNM'') securities. *See* Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3897 (January 25, 2000). SuperSOES will become Nasdaq's primary automatic execution trading platform. To date, Nasdaq has not implemented SuperSOES.

[4] *See* Letter from Thomas P. Moran, Assistant General Counsel, Nasdaq, to Jack Drogin, Assistant Director, Division of Market Regulation, Commission, dated January 30, 2001 (''Amendment No. 1''). In Amendment No. 1, the Nasdaq added a footnote to proposed NASD Rule 4710(b)(1)(D)(3) requiring the lead underwriter of a secondary offering to submit a written request to the Nasdaq Market Operations Department no later than the business day prior to the start of trading in the secondary offering to obtain immediate processing of executions in the secondary offering.

[5] *See* Securities Exchange Act Release No. 43958 (February 13, 2001), 66 FR 11076.

[6] *See* Securities Exchange Act Release No. 43720 (December 13, 2000), 65 FR 79909 (December 20, 2000) (notice of filing and immediate effectiveness of File No. SR–NASD–00–67) (''2000 Notice''). Nasdaq will implement the two-second interval delay on a six-month pilot basis.

offerings. Under the proposal, on the first day of trading of the securities of a SuperSOES-eligible IPO or secondary offering, after SuperSOES has executed an order against a market maker's displayed quote and reserve size (if applicable), the market maker will be required to execute another order at its posted bid or offer in that security as soon as SuperSOES delivers another order to the market maker's quote. Consequently, a market maker will be available for subsequently execution at its posted quote as quickly as the system can transmit instructions between the execution and quote-update engines, an operation that, according to Nasdaq, generally requires from one to one and one half seconds.

After the first day of trading in the IPO or secondary offering, the NNMS interval delay between executions against the same market maker at the same price level will be determined by whether or not the security is part of the Nasdaq 100 Index. Thus, on subsequent trading days, the NNMS interval delay between executions against the same market maker at the same price level for a Nasdaq 100 Index security would be two seconds and the NNMS interval delay between executions against the same market maker at the same price level for a security that is not a part of the Nasdaq 100 Index would be five seconds.[7]

Nasdaq proposes to implement the proposal on a six-month pilot basis beginning when SuperSOES become operational. During operation of the pilot program, Nasdaq represents that it will monitor the performance of the system under the proposed parameters to determine whether the proposed measures adequately address the concerns expressed by market participants.

Nasdaq believes that reducing the interval delay between executions on the first day of trading of NNMS-eligible IPOs and secondary offerings will ensure that customer orders for those securities are processed in the most expeditious manner possible. Nasdaq also believes that such processing will improve market function and aid in the price discovery process.

[7] Nasdaq will continue its current practice of using the same interval delay between multiple round-lot executions against the same market participant for odd-lot executions of that same security. For example, if the interval delay in a security is five seconds, the interval delay after an odd-lot execution would also be five seconds. In addition, Nasdaq represents that it will closely monitor odd-lot order entry activity in NNMS to ensure that such activity dos not adversely impact market quality.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[8] In particular, the Commission finds that the proposal is consistent with section 15A(b)(6) of the Act[9] because it is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in processing information with respect to and facilitating transactions in securities, as well as to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

As discussed more fully above, the interval delay in SuperSOES will be two seconds for Nasdaq 100 Index securities and five seconds for all other Nasdaq NMS securities. In its proposal to establish a two-second interval delay for Nasdaq 100 Index securities, Nasdaq noted that market participants had expressed concern that a five-second interval delay could hinder the efficient and orderly operation of SuperSOES by causing a queuing of orders in securities with rapid order flow.[10]

According to Nasdaq, market participants have raised similar queuing concerns in connection with the rapid flow of orders accompanying IPOs and secondary offerings. The Commission believes that the current proposal responds to concerns raised by market participants and should help to minimize the queuing of orders for IPOs and secondary offerings on their first day of trading. The Commission believes that the prompt execution of orders for IPOs and secondary offerings may facilitate the price discovery process, to the benefit of all market participants.

Nasdaq proposes to implement the proposal on a six-month pilot basis, commencing with the launch of SuperSOES. The Commission believes that implementing the proposal on a six-month pilot basis should provide Nasdaq with time to evaluate the operation of the proposed changes and their impact on the market.

Amendment No. 1 requires the lead underwriter of a secondary offering to communicate to the Nasdaq Market Operations Department, no later than the business day prior to the start of the trading in the secondary offering, that it wishes to obtain immediate processing of executions in the secondary offering.[11] If the request is not made in a timely manner, the secondary offering will be processed pursuant to the interval delays applicable to the security. The Commission finds that this requirement will help ensure that Nasdaq is specifically made aware of the need to remove the interval delay on the first day of such an offering.

[8] 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).

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] *See* 2000 Notice, *supra* note 6.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposal, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NASD–01–03) and Amendment No. 1 thereto are approved on a six-month pilot basis, commencing with the launch of SuperSOES.

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. 34–44144; File No. SR–NASD–00–81]

RIN

Self Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Computer to Computer Interface Fees for Non-NASD Members

April 2, 2001.

I. Introduction

On December 26, 2000, the National Association of Securities Dealers, Inc. (''NASD'') through its 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 relating to computer to computer interface fees for

[11] *See* Amendment No. 1, *supra* note 4.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.