

Code in order to conform that Section to the Uniform Code, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

*Deputy Secretary.*

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[Release No. 34-36490; File No. SR-NASD-95-52]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Gross Income Assessments for Member Firms**

November 16, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on November 3, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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 NASD. The NASD has designated this proposal as one establishing or changing a fee under § 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. 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**

Pursuant to the provisions of Section 19(b)(1) under the Act, the NASD is herewith filing a proposed rule change to Section 1(c) of Schedule A to the NASD By-Laws to revise the credit allowed to members against the annual assessment on their gross income. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

**Schedule A to the NASD By-Laws**

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of the Corporation, shall be determined on the following basis.

**Section 1—Assessments**

Each member shall pay an annual assessment composed of:

\* \* \* \* \*

(c) Members shall receive a credit against the annual assessment on gross

income stated in paragraph (a) above as follows:

(i) Portion of assessment > \$5,000 – [25]23%

(ii) Portion of assessment > \$25,000 – [5]4% additional

(iii) Portion of assessment > \$50,000 – 5% additional

(iv) Portion of assessment > \$100,000 - [5]4% additional

**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 NASD 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. The NASD 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**

Pursuant to Article VI of the By-Laws of the Corporation, the NASD requires its members to pay an annual assessment fee, as defined by Schedule A, Section 1 to the By-Laws ("Schedule A"). NASD members are required under Section 1(a) of Schedule A to pay an amount equal to the greater of \$850.00 or the total of a specified percentage of their annual gross income from securities transactions.<sup>1</sup> NASD members also receive, pursuant to Section 1(c) of Schedule A, a credit against the annual assessment on their gross income imposed under Section 1(a) of Schedule A. The Schedule A, Section 1(c) credit to members is calculated by a tiered discount structure that is intended to address, to some extent, the regulatory subsidy provided by larger NASD firms.

The NASD recently has reviewed its fee structure in order to further align revenues with the cost of providing particular services to members. The proposed rule change would amend Section 1(c) of Schedule A to revise the

<sup>1</sup> Schedule A, Section 1(a) requires NASD members to pay an amount equal to the greater of \$850.00 or the total of: (i) 0.125% of annual gross revenue from state and municipal securities transactions; (ii) 0.125% of annual gross revenue from other over-the-counter securities transactions; (iii) 0.125% of annual gross revenue from U.S. Government securities transactions; and (iv) with respect to members whose books, records and financial operations are examined by the NASD, 0.125% of annual gross revenue from securities transactions executed on an exchange.

credit allowed to members against the annual assessment on their gross income under Section 1(a) of Schedule A as follows:

(i) Portion of assessment > \$5,000 – [25]23%

(ii) Portion of assessment > \$25,000 – [5]4% additional

(iii) Portion of assessment > \$50,000 – 5% additional

(iv) Portion of assessment > \$100,000 – [5]4% additional

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges in that the proposed rule change equitably adjusts fees and assessments to conform to the NASD's projected 1995 budget.

**(B) Self-Regulatory Organization's Statement on Burden on Competition**

The NASD 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**

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of Rule 19b-4 thereunder in that it constitutes a due, fee or other charge.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the 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.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 SR-NASD-95-52 and should be submitted by December 15, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,  
*Deputy Secretary.*

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[Release No. 34-36489; File No. SR-NYSE-95-37]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to a Pilot Program to Display Price Improvement on the Execution Report Sent to the Entering Firm**

November 16, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on November 6, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On November 16, 1995, the NYSE filed Amendment No. 1 to the proposed rule change.<sup>1</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**

The proposed rule change consists of additional descriptions of the pilot

program whereby the Exchange will test and evaluate a means of calculating and displaying, on the execution reports sent to member firms, the dollar amounts realized as savings to their customers as a result of price improvement in the execution of their orders on the Exchange.<sup>2</sup> Initially, the Exchange expects to work with Merrill Lynch, Pierce, Fenner & Smith, Incorporated ("Merrill Lynch") in testing and evaluating the proposed methodology. Assuming the results of the pilot program are successful, the Exchange will make this program available to all its member organizations in January 1996.

**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 self-regulatory organization 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. The self-regulatory organization 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**

As noted in the Pilot Filing, the purpose of the six month pilot program is to develop, test, and evaluate a methodology and program for calculating and displaying, on an execution report sent to member firms entering orders, the dollar value saved by their customers as a result of price improvement of orders executed on the Exchange. This program does not in any way affect the actual execution of orders. The Exchange refers to this calculated dollar savings as the "NYSE PRIME<sup>SM</sup>."

In the Pilot Filing, the Exchange presented several examples of how NYSE PRIME is intended to work. Herein, the Exchange is providing an additional example as to how NYSE PRIME will operate in situations when

an order is stopped against the prevailing bid or offer and then exposed at a better price in an effort to obtain price improvement for the order.

Assume the NYSE market quote is 50-50<sup>3</sup>/<sub>8</sub>, with 500 shares bid and 10,000 offered, and that the best offer displayed in the National Market System is 50<sup>1</sup>/<sub>4</sub> for 200 shares. A market order to buy 1,000 shares, entered on the NYSE is stopped at 50<sup>3</sup>/<sub>8</sub>, meaning it is guaranteed to buy at 50<sup>3</sup>/<sub>8</sub> or a better price. The order is subsequently executed at 50<sup>1</sup>/<sub>4</sub> on the NYSE. Because in this situation there is not complete price improvement, there would be no representation of NYSE PRIME price improvement on the execution report.

The NYSE PRIME program operates in the same manner when an order is not stopped, but is executed at a price equal to the best price displayed in the National Market System if that quotation size is 200 shares or more.<sup>3</sup>

**2. Statutory Basis**

The basis under the Act for this rule change is the requirement under Section 6(b)(5) 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. This rule change is designed to perfect the mechanism of a free and open market in that it enhances the information provided to investors by displaying to them the dollar value of the price improvement their orders may have received when executed on the NYSE.

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

The Exchange does not believe that the rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In fact, the Exchange believes that the NYSE PRIME program can reasonably be expected to enhance competition by disclosing to investors the amount of savings they may realize as a result of the price improvement their orders may receive when executed on the NYSE.

<sup>1</sup> See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Howard Kramer, Associate Director, Division of Market Regulation, SEC, dated November 16, 1995. Amendment No. 1 modified the original filing by removing the Exchange's proposal to calculate price improvement based on size. Amendment No. 1 also modified the pilot to make the program available to all NYSE member organizations starting in January 1996.

<sup>2</sup> See Securities Exchange Act Release No. 36421 (October 26, 1995), 60 FR 55625 (November 1, 1995) (notice of filing and immediate effectiveness of proposed rule change by the NYSE relating to a six-month pilot program to display price improvement on the execution report sent to the entering firm) (File No. SR-NYSE-95-35) ("Pilot Filing").

<sup>SM</sup> NYSE is a service mark of the New York Stock Exchange.

<sup>3</sup> The Commission notes that this filing initially proposed to modify the program, as soon as practicable, to reflect price improvement on 800 shares in the above example, whether or not the order was stopped. In Amendment No. 1, the NYSE indicated that it will not modify the PRIME program to represent price improvement as initially proposed in this filing. See *supra* note 1.