Act,[8] which requires, among other things, that the Association's rules 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. The Commission also finds that the proposal, as amended, is consistent with section 15A(b)(7) of the Act,[9] in that it will allow for reasonable safeguarding of investors' interests while establishing fair and reasonable rules for the Association's members and persons associated with its members. The Commission also finds the proposal is consistent with section 15A(b)(8) of the Act,[10] in that it furthers the statutory goal of providing a fair procedure for disciplining the Association's members and associated persons. Finally, the Commission finds the proposal is consistent with Securities Exchange Act Rule 19d–1(c)(2)[11] that governs minor rule violation plans.

In approving this proposal, the Commission in no way minimizes the importance of compliance with these rules, and all other rules subject to the imposition of fines under the Association's MRVP. The Commission believes that the violation of any self-regulatory organizations' rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Association with greater flexibility in addressing certain violations, the MRVP provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the Association will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under its MRVP, on a case by case basis, or if a violation requires formal disciplinary action.

The Commission finds good cause for approving proposed Amendment No. 3 before the 30th day after the date of publication of notice of filing of Amendment No. 3 in the **Federal Register.** The Association filed Amendment No. 3 largely in response to concerns raised by the Commission regarding language in the original proposal, and ambiguity regarding how the Association intended to monitor violations of certain rules if those rules were administered under the Association's MRVP. Amendment No. 3 clarifies the ambiguities noted by the Commission and eliminates some rules that did not lend themselves to enforcement through an MRVP to address the Commission's concerns. The substantive changes implemented in Amendment No. 3 warrant accelerated approval. For these reasons, the Commission finds good cause for accelerating approval of Amendment No. 3.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether proposed Amendment No. 3 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–00–39 and should be submitted by August 3, 2001.

It Therefore Is Ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NASD–00–39), including Amendment Nos. 1, 2 and 3, is approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17518 Filed 7–12–01; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78o–3(b)(6).

[9] 15 U.S.C. 78o–3(b)(7).

[10] 15 U.S.C. 78o–3(b)(8).

[11] 17 CFR 240.19d–1(c)(2).

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

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44522; File No. SR–NASD–2001–36]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Eliminate the Service Desk Feature of the Automated Confirmation Transaction Service

July 6, 2001.

On May 16, 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 (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–6 thereunder,[2] a proposed rule change to eliminate the Service Desk feature of the Automated Confirmation Transaction Service (''ACT''). Nasdaq amended the proposal on May 31, 2001,[3] and again amended the proposal on June 7, 2001.[4]

The proposal, as amended, was published in the **Federal Register** on June 19, 2001.[5] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[6] and, in particular, the requirements of section 15A of the Act[7] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 15A(b)(6) of the Act,[8] which requires that the Association's rules be designed 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

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

[2] 17 CFR 240.19b–6.

[3] *See* May 30, 2001 letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission and attachments.

[4] *See* June 6, 2001 letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission.

[5] *See* Securities Exchange Act Release No. 44411 (June 12, 2001), 66 FR 32971.

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78o–3.

[8] 15 U.S.C. 78o–3(b)(6).

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

The Commission finds good cause for granting accelerated approval of the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof 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.[9] The Commission received no comments on the proposal. Given the absence of comments, and Nasdaq's desire to eliminate this service while simultaneously offering to assist members in transitioning towards other methods of reporting trades to ACT, the Commission finds good case to approve the proposal on an accelerated basis.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NASD–2001–36), as amended, be, and it hereby is, approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17520 Filed 7–12–01; 8:45 am]

BILLING CODE 8010–01–M

[9] *See* footnote 5, *supra.*

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44526; File No. SR–NASD–00–30]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change To Include UTP Exchanges on a Voluntary Basis in the Nasdaq National Market Execution Service

July 6, 2001.

I. Introduction

On May 25, 2000, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned 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 to include unlisted trading privilege exchanges (''UTP Exchanges'') in the automatic-execution function of the Nasdaq National Market Execution Service (''NNMS'') on a voluntary basis. The proposed rule change was published for comment in the **Federal Register** on June 5, 2000.[3] The Commission received one comment letter on the proposed rule change.[4] On July 6, 2001, the Association submitted Amendment No. 1 to the proposed rule change.[5] This order approves the proposed rule change. The Commission also is granting accelerated approval to Amendment No. 1 to the proposed rule change and is soliciting comment on Amendment No. 1 from interested persons.

II. Description of the Proposal

On January 14, 2000, the Commission approved the NNMS trading platform, which is scheduled to be phased-in on July 9, 2001.[6] As approved, the NNMS will be an automatic execution system that will serve as the primary trading platform for Nasdaq National Market securities. Under the NNMS rules, participation in the NNMS will be mandatory for Nasdaq market makers, and those market makers will be required to participate in the automatic-execution function of the system. In this proposed rule change, Nasdaq amended the NASD rules governing the NNMS to enable UTP Exchanges to participate in the automatic-execution function of the NNMS. Participation by UTP Exchanges in the NNMS, however, is voluntary.[7]

In the NNMS, the quotes of market makers, ECNs[8] (Full Participant ECNs and Order Entry ECNS), and UTP Exchanges are accessed in general price/time priority. As the NNMS was originally proposed and approved, UTP Exchanges would only receive orders through Nasdaq's SelectNet system. This was because UTP Exchanges have traditionally received orders against their quotes through the order-delivery functionality of SelectNet. Because SelectNet is an order-delivery system—as opposed to an automatic-execution system like the NNMS—UTP Exchanges that receive SelectNet orders must manually respond to the order to complete a trade.

After the Commission approved the NNMS, the Chicago Stock Exchange (''CHX'') and Nasdaq began discussion the possibility of the CHX participating in the automatic-execution functionality of the NNMS. Both Nasdaq staff and the CHX recognized that there cold be delays in processing orders if a UTP Exchange is alone at the inside and does not respond, within 90 seconds, to orders delivered to its quote.[9] This could occur if the UTP Exchange is experiencing system problems, is slow to process an order, or if there are delays in Nasdaq systems.

In light of the above, Nasdaq is proposing to permit UTP Exchanges to participate in the automatic-execution functionality of the NNMS. Participation by UTP Exchanges is voluntary. The proposed rule change also clarifies that if a UTP Exchange participates in the automatic-execution functionality of the NNMS, orders preferenced to the UTP Exchange's quotes mut meet the oversized requirement or other conditions of the rule. This is to limit the potential for dual liability for UTP Exchanges.

In addition, Nasdaq is proposing non-substantive rule changes to correct drafting errors in the original rule proposal to clarify that orders sent to quotes of Order Entry ECNs are not subject to the oversized order or the requirements in the rule, while orders sent to Full Participant ECNs are subject

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

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42847 (May 26, 2000), 65 FR 35690.

[4] *See* letter to Jonathan G. Katz, Secretary, SEC, from Gerald D. Putnam, Chief Executive Officer, Archipelago, L.L.C., dated October 25, 2000 (''Archipelago Letter'').

[5] *See* letter to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, from Thomas Moran, Associate General Counsel, Nasdaq, dated July 6, 2001 (''Amendment No. 1''). In Amendment No. 1, the Association amended the language of NASD Rule 4720 to reflect amendments recently published by the Commission. *See* Securities Exchange Act Release No. 44506 (July 3, 2001). In addition, the Association clarified that participation by UTP Exchanges in the NNMS is voluntary. Finally, the Association added language to clarify the continued use SelectNet upon implementation of NNMS.

[6] The NNMS trading platform was scheduled for implementation on July 10, 2000, prompting Nasdaq's request for approval of this proposed rule change by that date. On June 30, 2000, Nasdaq announced that it was postponing the implementation until the last quarter of 2000. Telephone conversation between Tom Moran, Associate General Counsel and John Malitzis, Assistant General Counsel, Office of the General Counsel, Nasdaq, and Heather Traeger, Attorney, Division of Market Regulation, SEC, on July 5, 2000. *See also* Securities 2000) (approving the new NNMS trading platform).

[7] *See* Amendment No. 1.

[8] For a description of the NNMS and the terms used in this order, *see* Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987 (January 25, 2000).

[9] While this is also a concern with ECNs, Nasdaq believes the concern is substantially smaller because ECNs are required to provide an automated response to SelectNet messages, and, in Nasdaq's experience, they generally respond in 5 seconds or less to orders presented to their quotes. UTP Exchanges are not under the same explicit obligation.