discriminatory, and protect investors and the public interest by implementing an efficient means to punish the violations of Exchange rules discussed above (*i.e.*, failing to submit an exercise advice; submitting an advice without subsequently exercising an option; submitting an exercise advice after the designated cut-off time; and submitting an exercise advice for an amount different than the amount exercised). By using the Exchange's summary fine program to punish these violations that the exchange represents are often inadvertent should allow the Exchange to allocate its resources to monitoring and punishing more serious and intentional offenses.

The Commission also believes that the proposal is consistent with the Section 6(b)(6) requirement that the rules of an exchange provide that its members and persons associated with its members shall be appropriately disciplined for violations of rules of the exchange.[12] In this regard, the proposal may provide an efficient procedure for the appropriate disciplining of members in those instances when a rule or policy violation is either minor or inadvertent.[13]

The Commission finds good cause for approving Amendments No. 1 and No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** CBOE's original proposal did not provide persons fined under the summary fine schedule with an opportunity to contest the exchange's determination. Amendment No. 1 ensures that alleged violators of the summary fine schedule are entitled to contest violations and request hearings, in accordance with CBOE Rule 1750(c)(1). In addition, the original proposal included time-stamping of an advice or exercise instruction memorandum prior to purchasing contracts in the list of minor rule violations. Amendment No. 2 removed this violation from the list of violations. The violation was removed because current CBOE rules require Exchange regulatory staff to time-stamp exercise advises upon depositing them into the exercise advice box. As a result, the practice of pre-time stamping is not relevant.

[12] 15 U.S.C. 78f(b)(6).

[13] The Commission notes that under the proposal, a member could potentially receive two letters of information and two letters of caution in a given year before receiving a fine for a violation. The Commission believes that such a scenario could undermine the deterrent effect of the summary fine program with respect to the violations discussed in the proposal. As a result, the Commission has advised the Exchange to monitor this potential problem.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendments No. 1 and No. 2, including whether they are consistent with the Act. person 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 that are filed with the Commission, and all written communication 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–98–41 and should be submitted by April 1, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–CBOE–98–41), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–6005 Filed 3–10–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41128; File No. SR–NASD–99–09]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Establishment of an Agency Quotation in Nasdaq

March 2, 1999.

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 February 3, 1999, 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'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to permit the separate display of customer orders by market makers in Nasdaq through a market maker agency identification symbol. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Rule 4613. Character of Quotations.

(a) Two-Sided Quotations

(1) For each security in which a member is registered as a market maker, the member shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain two-sided quotations in The Nasdaq Stock Market, subject to the procedures for excused withdrawal set forth in Rule 4619.

(A) If a market maker updates the price of its bid or offer without any accompanying update to the size of such bid or offer, the size of the updated bid or offer shall be the size of the previous bid or offer.

(B) Notwithstanding any other provision in this paragraph (a), in order to display a limit order in compliance with SEC Rule 11Ac1–4, a registered market maker's displayed quotation size may be for one normal unit of trading or a larger multiple thereof.

(C) A registered market maker in a security listed on The Nasdaq Stock Market must display a quotation size for at least one normal unit of trading (or a larger multiple thereof) when it is not displaying a limit order in compliance with SEC Rule 11Ac1–4, provided, however, that a registered market maker may augment its displayed quotation size to display limit orders priced at the market maker's quotation.

(D) A market maker registered as such in a Nasdaq National Market Security may also maintain a separate agency quotation for that security, pursuant to the requirements of subparagraph (b) of this rule (''Agency Quotation'').

(2)–(5) No Change.

(b) Agency Quotations

For each Nasdaq National Market Security in which a member is registered as a market maker, that member may display in The Nasdaq Stock Market an Agency Quote (separate from its proprietary quotation required by paragraph (a) of this rule), pursuant to the following requirements and conditions:

(1) the Agency Quotation may be used to display customer orders, but shall not be used to display the market maker's own proprietary interest or the proprietary interest of another member who is registered as a market maker in the security at issue; provided, however, that a market maker may display in the Agency Quote a proprietary interest that represents a portion of a customer order that the market maker contemporaneously has filled from inventory;

(2) the Agency Quote may be one sided, two sided, or in a closed-quote state, and shall not be subject to the procedures for excused withdrawal set forth in Rule 4619;

(3) Nasdaq shall assign a market maker identifier (''MMID'') to the Agency Quote that is distinct from the MMID for the market maker's proprietary quote.

(b) and (c)—Redesigned as (c) and (d) respectively

(d) Reasonably Competitive Quotations—Deleted.[3]

(e) Locked and Crossed Markets—No Change

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

Nasdaq is proposing to allow market makers in Nasdaq National Market Securities (''NNM'') to display in Nasdaq a second quotation separate from their proprietary quotation for the purpose of displaying customer interest. This second quotation—the Agency Quote—would facilitate the display and execution of agency orders in NNM securities. Nasdaq states that the purpose of the Agency Quote is to give market makers more flexibility in determining how they wish to handle customer orders and other agency business. Instead of having to display a customer limit order in their proprietary quote or in a qualifying electronic communications network (''ECN'''), market makers would also be able to display the order in their Agency Quote. Thus, Nasdaq believes that the proposal will allow market makers to regain control over their proprietary quotes that was lost with the introduction of the SEC's Order Handling Rules (''Order Handling Rules'' or ''OHR'').[4]

(a) *Proprietary Quotes and SEC Order Handling Rules.* Currently, a member registers as market maker in a particular stock by obtaining authorization from Nasdaq to display a proprietary quotation in the Nasdaq quote montage.[5] Such quotation is identified with a four character identifier unique to that market maker (''market maker identifier'' or ''MMID''), and is sequenced in price/time/size priority along with the quotes of other Nasdaq market participants (*i.e.*, market makers, ECNs, and UTP exchanges).

Nasdaq rules require that each registered market maker display during normal market hours (9:30 a.m. to 4:00 p.m.) a continuous and two-sided quotation with a designated price and size.[6] Once registered, market makers are obligated to continue to display two-sided quotes, unless the market maker withdraws (or is deemed to have withdrawn) from registration, subject to certain limited exceptions.[7]

According to Nasdaq, because of the nature of a dealer market, market makers historically have traded as principal rather than agent and market maker quotes historically have represented the market maker's willingness to buy or sell as principal a particular stock at a stated price and size. Nasdaq maintains that although market maker quotes are firm, and generally represented only the market maker's proprietary trading interest prior to 1997, market makers often were willing to trade well in excess of their quoted size.

In Janaury of 1997, however, the Commission implemented the Order Handling Rules, which incorporated into Nasdaq some principles of auction markets. Specifically, the SEC adopted Rule 11Ac1–4 (''Display Rule''),[8] which requires market makers to display customer limit orders that: (1) are priced better than a market maker's quote; or (2) add to the size of a market maker's quote when the market maker is at the best bid or best offer (''BBO'') in Nasdaq.[9] The SEC also adopted amendments to its Firm Quote Rule—Rule 11Ac1–1 under the Act [10]—which require a market maker to make publicly available any superior prices that it privately quotes through an ECN (''ECN Rule'') by either: (1) changing its quote to reflect the superior price in the ECN; or (2) delivering better-priced orders to an ECN that disseminates these priced orders to the public quotation system and provides broker-dealers equivalent access to these orders (''ECN Display Alternative'').

Nasdaq believes that the implementation of the OHR has effected the structure of the dealer market and the way in which many market makers transact business and process orders. Specifically, with the amendments to the Display Rule, customers have the ability to directly effect a market maker's quote and advertise their trading interest—along with the market maker's proprietary interest—in the market maker's quote. Market makers have expressed concern to Nasdaq that the implementation of the OHR have caused them (market makers) to ''lose control'' of their quotes because market makers must change their proprietary quote to reflect certain limit orders and must ''advertise competing interests in their quotes.'' Additionally, Nasdaq believes that the OHR frequently make

[3] *See* Exchange Act Release No. 39120 (Sept. 23, 1997), 62 FR 51170 (Sept. 30, 1997) (Order approving SR–NASD–97–70 eliminating the NASD's excess spread rule as of October 13, 1997).

[4] *See* Exchange Act Release No. 37619A (Sept. 6, 1996), 61 FR 48290 (Sept. 12, 1996).

[5] *See* NASD Rule 4611.

[6] *See* NASD Rule 4613(a).

[7] *See* NASD Rules 4619 and 4620. If a market maker does not qualify for an excused withdrawal under NASD Rule 4619, the withdrawal is deemed voluntary and the market maker is subject to a 20-day penalty before the market maker can re-register in the stock.

[8] 17 CFR 240.11Ac1–4.

[9] The requirements found in Rule 11Ac1–4 under the Act do not apply to any customer limit order that is: (1) executed upon receipt; (2) placed by a customer who expressly requests, either at the time that the order is placed or prior thereto pursuant to an individually negotiated agreement with respect to such customer's orders, that the order not be displayed; (3) an odd-lot order ; (4) a block size order, unless a customer placing such order requests that the order be displayed; (5) delivered immediately upon receipt to an exchange or association-sponsored system, or an ECN that complies with the requirements of Rule ''11Ac1–1(c)(5)(ii) under the Act with respect to that order; (6) delivered immediately upon receipt to another exchange member or OTC market maker that complies with the requirement of this section with respect to that order; or (7) an ''all or none'' order. *See* 17 CFR 240.11Ac1–4(c).

[10] *See* 17 CFR 240.11Ac1–1.

it difficult for market makers to ''work'' institutional or block-sized orders, which generally are accepted on a not-held basis and are for a negotiated net price. For example, a market maker may be piecing out part of an institutional/block-sized order in its quote (*e.g.*, the market maker is displaying a bid for 2,000 shares of a 20,000 share buy order) when it receives a 200 share order priced 1/16th better than the order being worked. Unless the market maker executes the smaller order or sends it to an ECN or another broker-dealer to be displayed, the market maker must display the 200 share customer limit order, which may impede the market maker's ability to execute the institutional order efficiently.

Nasdaq also believes that the inability of market makers to separate their retail and proprietary interest sometimes causes confusion to market participants. For example, if a market maker displays a 200 share limit order that improves its quote, an institutional customer may see the 200 share order in the quote and erroneously believe that the quote represents a price level at which the market maker wishes to trade proprietarily, for a greater size. Thus, institutions may erroneously conclude that the price of a displayed customer limit order represents the starting point for negotiating the net price the institution will receive or pay if it places a large order with the market maker.

Alternatively, a market maker may send a customer limit order to a qualifying ECN or other broker/dealer for handling. Nasdaq contends that in these situations, the market maker is, in effect, giving away business. Furthermore, transaction costs may increase because the ECN may impose a fee on the shipped limit order. In addition, the NASD's Manning Interpretation [11] requires the market maker to retrieve and execute the limit order that was sent to the ECN or other market maker it the market maker trades at the same or superior price to the limit order.[12] Nasdaq believes that retrieving the customer limit order this may be logistically and technologically difficult for the market maker. Thus, Nasdaq believes that the OHR have created regulatory and administrative difficulties for market makers under certain circumstances. Nasdaq notes that it has proposed to establish a limit order facility or ''book'' in Nasdaq to address some of the issues outlined above, but that such proposals have been unsuccessful in obtaining SEC approval and industry support.[13]

(b) *Agency Quote Proposal.* Nasdaq believes that the Agency Quote proposal is a logical solution to the problem of trying to represent both proprietary and agency interest in the same quotation. Nasdaq also believes that the Agency Quote proposal should satisfy the interest of some market participants who desire to have a limit order display capability (or book) in Nasdaq, while addressing concerns that Nasdaq should not operate a limit order book that competes with members.

Under this proposal, Nasdaq would provide market makers with the ability voluntarily display a separate and uniquely identified quotation in the Nasdaq quote montage for displaying customer orders in NNM securities. As proposed, market makers would be permitted to establish a second MMID for Agency Quotes in stocks in which the firm is a registered market maker in an NNM security.[14] Nasdaq initially is proposing to limit the Agency Quote capability to NNM securities so that it can develop experience with this type of facility and study the effects of the proposal on the market, before proposing to expand the concept to the a Nasdaq SmallCap Market.

The proposal would permit market makers to publish a one-sided as well as a two-sided Agency Quote, and would permit market makers to leave their Agency Quote inactive. Market makers could display in the Agency Quote their own customers' orders and the orders of other broker/dealers. Market makers could choose to reflect the order, in whole or in part, in the Agency Quote. (Of course, a market maker could continue to represent a customer limit order in its proprietary quote.) A market maker would not be permitted, however, to display in the Agency Quote its own proprietary interest or the proprietary interest of another broker/dealer that also is a registered market maker in the security at issue. The rule provides, however, an exception to this general prohibition, which would allow a market maker to display in the Agency Quote a proprietary interest that represents a portion of a customer order that the market maker has contemporaneously filled from its inventory. This exception would assist market makers in working large customer orders. Thus, a market maker would be able to stop a portion of an institutional order, fill the stopped portion from inventory, and display the stopped portion in its Agency Quote.[15] Accordingly, market makers could use the Agency Quote to work an institutional-sized order by displaying the entire order, or portions of the order, in the quote.

For example, a market maker working a 20,000 share order could display 1,000 shares at a time in its Agency Quote. As noted above, the market maker also could use the Agency Quote to offset orders that were contemporaneously (and previously) executed with a customer that were part of an institutional order. Thus, if a market maker received an order to buy 100,000 shares from a customer and the market maker immediately sold the customer 60,000 shares out of the market maker's inventory, the market maker could thereafter reflect the 60,000 shares in its Agency Quote (in full or incrementally) or cold reflect the full 100,000 shares in the Agency Quote (*i.e.*, 60,00 shares proprietary and 40,000 shares agency).

Under the proposed rule change, the Manning Interpretation will continue to apply to both the market maker's proprietary and Agency Quotes. Therefore, a market maker will still be prohibited from trading ahead of customer orders, whether the order was reflected in the market maker's proprietary quote or Agency Quote.[16] In

[11] Under the Manning Interpretation, a member violates NASD Rule 2110, which requires members to observe high standards of commercial honor and just and equitable principles of trade, if the member accepts and holds an unexecuted limit order from its customer (or a customer of another member) in a Nasdaq security and continues to trade the security for its own account at prices that would satisfy the customer's limit order, without executing that limit order. The interpretation further provides that a member firm may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to limit orders that are: (a) for customer accounts that meet the definition of an ''institutional account'' as defined in Rule 3110(c)(4); or (b) 10,000 shares or more, unless such orders are less than $100,000.

[12] *See* NASD Rule 2110 and IM–2110–2; Interpretive Letter by Tom Gira, Associate General Counsel, dated July 3, 1997, regarding interaction between NASD Rule 2110/IM–2110–2 and Section 206(3) of the Investment Advisers Act of 1940 (available on www.nasdr.com).

[13] *See e.g.*, SR–NASD–95–42, Exchange Act Release No. 37302 (June 11, 1996), 61 FR 31574 (June 20, 1996) (Notice of SR–NASD–95–42 proposing to adopt the NAqcess system).

[14] If a market maker withdraws from a security on an unexcused basis, the firm is deemed to have been withdrawn from registration as a market maker and therefore will not be permitted to maintain an Agency Quote. *See* NASD Rules 4619 and 4620. Similarly, if a firm withdraws on an excused basis, the firm would be permitted to maintain an Agency Quote during the excused withdrawal period. *See id.*

[15] As noted *infra*, if a market maker executed its proprietary interest displayed in the Agency Quote, the market maker would still be obligated under the Manning Interpretation to protect any limit order covered by Manning that may have been transferred to another broker-dealer or ECN for execution.

[16] As is the case today, a market maker could trade at a price equal or superior to a customer limit order if the market maker had negotiated ''terms and conditions'' consistent with the exception in the Manning Interpretation. *See* note 11, *supra.*

addition, Agency Quotes will be available for auto-execution through SOES or its successor system.[17] Any execution effected through the automated facilities of Nasdaq against the Agency Quote would be reported by the Nasdaq system.[18] Nasdaq also will permit Agency Quotes to use a supplemental size (*i.e.*, reserve size) feature, so that a customer could have a portion of its order displayed in the quote, with the remainder of the order in reserve to be displayed in pieces after the displayed portion is executed.

This proposal would provide a facility for the display and the automatic execution of customer limit orders, and would also allow market makers to retain their limit order business. Thus, the proposal should satisfy the interest of some market participants who desire to have a limit order display capability in Nasdaq, and allay some concerns that Nasdaq should not operate a limit order book that competes with members. Because quotes will be more easily identifiable as either proprietary or agency, the proposal should also allow market participants to better identify the prices and sizes at which market makers wish to trade proprietarily. Thus, the proposal should facilitate the negotiation of trades between market makers and institutions, as well as other market participants.

(c) *Fees for Accessing Agency Quotations.* Currently, many ECNs charge fees to market participants (and ECN subscribers) that execute against a customer order that is displayed in the ECN. Although market makers currently may not charge a similar fee when their public quotes are accessed, market makers have expressed a desire to do so, in particular since they often are acting as agent by displaying a customer's interest in their quote. Some market makers argue that it is inequitable that ECNs are permitted to charge a fee when their quote is accessed, but market makers are prohibited from charging a fee in similar situations when they act as agent.[19] Nasdaq notes, however, that in the past it was impossible to readily determine whether a market maker's quote represented its customers' interest or its proprietary interest, and thus whether it was acting as principal or agent. The Agency Quote proposal, if adopted, should change the structure of the market so it will be clear that when the market maker's Agency Quote is accessed, it is acting as agent.[20] In light of the foregoing, Nasdaq plans to file a proposal shortly that would permit market makers to charge a fee when their Agency is accessed, similar to what ECNs currently may do.[21] Nasdaq anticipates that the Agency Quote Fee proposal will require market makers and ECNs to round their quotes if the market maker's Agency Quote access fee exceeds a ½ cent per share.[22]

(2) Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Sections 15A(b)(6),[23] 15A(b)(11),[24] and 11A of the Act.[25] Section 15A(b)(6)[26] requires that the rules of a registered national securities association are 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; these rules must not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 15A(b)(11)[27] requires that the rules of a registered national securities association be designed to produce fair and informative quotations, prevent fictitious or misleading quotations and to promote orderly procedures for collecting, distributing, and publishing quotations. Section 11A(a)(1)(C)[28] provides that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (1) Economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors' orders in the best market; and (5) an opportunity for investors' orders to be executed without the participation of a dealer.

Nasdaq believes that the proposal will provide another mechanism—and therefore make it easier—for market makers to display limit orders and to comply with their obligations under the Order Handling Rules. Thus, Nasdaq believes that the proposed rule change is consistent with Section 11A[29] and the SEC's Order Handling Rules,[30] and, in particular, the Display Rule.[31] Additionally, customer limit orders placed in the Agency Quote will be subject to auto-execution through SOES or Nasdaq's successor system. Thus, the proposal should assure the practicability of brokers executing investors' orders in the best market and assure an opportunity for investors' orders to be executed without the participation of a dealer. Additionally, by giving market makers the choice to display agency interest in a separate quote instead of sending the order to an ECN, transaction costs may be reduced.

Nasdaq believes that the proposal also will provide greater information to the market and will decrease confusion because market participants will be better able to determine whether a quote represents a market maker's agency or proprietary interest. Thus, the proposal should produce fair and informative quotations and assure the availability to brokers, dealers and investors of information with respect to quotations and transactions in securities.

The proposal also will make it easier for investors and market participants to determine the price at which a market maker wishes to trade proprietary. Thus, the proposal may better facilitate the negotiation of trade prices between

[17] Nasdaq has submitted a rule proposal to functionally integrate the SOES and SelectNet systems. *See* File No. SR–NASD–99–11.

[18] Under the NASD's riskless principal rule proposal currently on file with the SEC, the market maker would not be required to report the offsetting buy/sell to the customer so long as the two transactions (*e.g.*, the sale to the market maker and offsetting buy from the customer) were done contemporaneously at the same price. *See* Exchange Act Release No. 40382 (Aug. 28, 1998), 63 FR 47337 (Sept. 4, 1998) (notice for SR–NASD–98–59 relating to trade reporting).

[19] The Commission has interpreted the Firm Quote Rule to prohibit market maker fees for access to their public quotes. The Commission also believes that ECNs are not subject to the same obligations as market makers under SEC Rule 11Ac1–1(c)(5)(ii). *See* Letters from Robert L.D. Colby, Deputy Director, Division of Market Regulation (''Division''), Commission, to Joseph G. Messina, Vice President, M.H. Meyerson & Co., Inc., dated June 12, 1998 and Louis B. Todd, Jr., Partner—Head of Equity Trading, J.C. Bradford & Co., dated August 6, 1998.

[20] The Commission notes that as proposed, a market maker could display its proprietary interest in the Agency Quote if the maker had previously and contemporaneously executed a customer order. As proposed, this proprietary interest would not be identified as such in the Agency Quote.

[21] At this time, the Commission offers no opinion regarding the forthcoming Agency Quote Fee proposal's consistency with the Firm Quote Rule.

[22] Nasdaq believes the pending Agency Quote fee proposal should, among other things, increase price transparency and help to identify potential best execution issues. Telephone conversation between John Malitzis, Assistant General Counsel, Office of the General Counsel, Nasdaq and Marc McKayle, Attorney, Division, Commission, on March 1, 1999.

[23] 15 U.S.C. 78*o*–3(b)(6).

[24] 15 U.S.C. 78*o*–3(b)(11.

[25] 15 U.S.C. 78k–1.

[26] 15 U.S.C. 78*o*–3(b)(6).

[27] 15 U.S.C. 78*o*–3(b)(11.

[28] 15 U.S.C. 78k–1(a)(1)(C).

[29] U.S.C. 78k–1.

[30] *See* note 4, *supra.*

[31] *See* note 8, *supra.*

market makers, institutions, and other market participants. Accordingly, Nasdaq believes that the proposal will foster cooperation and coordination with persons engaged in facilitating securities transactions and will remove impediments to and perfect the mechanism of a free and open market and a national market system, and 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, 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 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, 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 File No. SR–NASD–99–09 and should be submitted by April 1, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[32]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–6044 Filed 3–10–99; 8:45 am]

BILLING CODE 8010–01–M

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41130; File No. SR–NYSE–99–7]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to an Examination Fee for the Trading Assistant Qualification Examination

March 3, 1999.

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 February 16, 1999, the New York Stock Exchange, Inc. (''NYSE'') filed with the Securities and Exchange Commission the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 the adoption of a $150 fee for candidates in connection with the new Trading Assistant Qualification Examination (''Series 25'') to be given by the NYSE.

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 NYSE 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 NYSE 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

The purpose of the proposed $150 fee for the new Series 25 examination is to offset the costs associated with development, implementation, administration and maintenance of that examination by the Exchange.

Exchange Rule 35 dictates the terms under which an employee of a member or member organization may be admitted to the Exchange Trading Floor. Recent amendments to Rule 35 require Trading Assistant, *i.e.,* Post Clerks and Booth Clerks, to be qualified by passing appropriate qualification examinations and by meeting appropriate training requirements.[3] The Exchange anticipates that administration of the Series 25 Examination will commence in March 1999.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(4) of the Act,[4] which permits the rules of an exchange to provide for the equitable allocation of reasonable dues, fees and other charges among the members, issuers and other persons using its services.

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

The proposed rule change will not impose 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

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 pursuant to Section 19(b)(3)(A) of the Act[5] and subparagraph (f) of Rule 19b–4 thereunder because the proposal is establishing or changing a due, fee or other charge.[6] At any time within 60 days of the filing of such proposed rule

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 40944 (January 13, 1999), 64 FR 3330 (January 21, 1999) (order approving File No. SR–NYSE–98–36).

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

[5] 15 U.S.C. 78(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f).