

italics; proposed deletions are in brackets.

Part III—Uniform Code of Arbitration

* * * * *

Member Surcharge

Sec. 45.

(a) Each member who is named as a party to an arbitration proceeding, whether in a Claim, Counterclaim, Crossclaim or Third-Party claim, shall be assessed a [\$200] non-refundable surcharge pursuant to the schedule below when the Arbitration Department perfects service of the claim naming the member on any party to the proceeding. For each associated person who is named, the surcharge shall be assessed against the member or members which employed the associated person at the time of the events which gave rise to the dispute, claim or controversy. No member shall be assessed more than a single surcharge in any arbitration proceeding. The surcharge shall not be subject to reimbursement under Subsections 43(c) and 44(c) of the Code.

Amount in Dispute	Surcharge
\$.01—\$10,000	\$100
\$10,000.01—\$50,000	200
\$50,000.01—\$100,000	300
\$100,000.01—\$500,000	350
Over \$500,000	500

(b) For purposes of this Section, service is perfected when the Director of Arbitration properly serves the Respondents to such proceeding under Subsection 25(a) of the Code.

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

In early 1994, the NASD added new Section 45 to the Code requiring any member named as a party to an arbitration proceeding to be assessed a non-refundable, flat \$200 surcharge in

order to offset significantly increasing resourcing needs resulting from, among other things, case growth and increased arbitrator recruitment and training. However, the NASD has long recognized that the amount in dispute in arbitration cases and controversies is generally directly proportional to the amount of resources the NASD needs to expend in order to resolve the case or controversy.

In recognition of the fact that larger cases require greater resources, the NASD is proposing to replace the flat surcharge of \$200 in Section 45 with a graduated surcharge based on the amount in dispute, ranging from a low surcharge of \$100 for amounts in dispute not exceeding \$10,000 to surcharge of \$500 for amounts in dispute exceeding \$500,000.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,¹ which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees and other charges among members in that the proposed rule fairly adjusts the surcharge on members for new cases to more closely reflect the costs associated with resolving controversies involving varying amounts in dispute.

(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.

¹ 15 U.S.C. § 78o-3.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 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 file number in the caption above and should be submitted by January 26, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-35171; File No. SR-NYSE-94-46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to the New York Stock Exchange's Specialist Combination Review Policy

December 28, 1994.

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 December 9, 1994, 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. 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 amendments to the New York Stock

² 17 CFR 200.30-3(a)(12)

Exchange's Specialist Combination Review Policy (the "Policy") which would require proponents of certain specialist unit combinations to address issues related to the capitalization, risk management, and operational efficiency of large sized specialist units.

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

The purpose of the proposed rule change is to provide uniformity to the Quality of Markets Committee's consideration of combinations of specialist units with respect to matters of capitalization, risk management, and operational efficiency.

The Policy requires Exchange approval of proposed specialist unit combinations exceeding five percent of any one of four concentration measures.¹ In any instance where a proposed combination will result in a specialist unit accounting for more than five percent of any concentration measure, the Exchange's Quality of Markets Committee (the "Committee") is required to conduct a review of the proposed combination. This review includes an analysis of specialist performance and market quality in the stocks subject to the proposed combination. The Committee looks at the effects of the proposed combination in terms of strengthening the capital base of the new unit, minimizing the potential for financial failure of the new unit and maintaining or increasing operational efficiencies within the resulting specialist organization. The

Committee also considers the proposed unit's commitment to the Exchange market and the effect of the proposed combination on overall concentration of specialist organizations.

Where a proposed combination would result in a specialist unit which accounts for more than ten percent of a concentration measure, the primary consideration during the Committee's review is the effect of the proposed combination on overall concentration of specialist units. If the new unit accounts for more than ten percent, but less than or equal to 15%, of a concentration measure, the Policy requires the proponents of the combination to prove, by a preponderance of the evidence, that the proposed combination:

- (i) would not cause detrimental concentration, in the specialist business, to the Exchange and its markets;
- (ii) would foster competition among specialist units; and
- (iii) would enhance the performance of the constituent specialist unit and the quality of the markets in the stocks involved.

The Policy also requires the proponents of any combination greater than ten percent, but less than 15%, to prove, by a preponderance of the evidence, that the proposed combination, if approved, is otherwise in the public's interest.

Where the proposed combination would result in a specialist unit which accounts for greater than 15% of a concentration measure, the Policy requires the proponents of the combination to provide clear and convincing evidence of the factors stated in (i) through (iii) above. The proponents of the combination would also be required to provide clear and convincing evidence that the proposed combination is otherwise in the public's interest.

The Exchange is proposing to amend the Policy to add several requirements which address issues related to the capitalization, risk management, and operational efficiency of large sized specialist units. The proposed rule changes require proponents of a combination that would exceed 10% of a concentration measure to:

- Submit an acceptable risk management plan with respect to any line of business in which they engage;
- Submit an operational certification prepared by an independent, nationally recognized management consulting organization with respect to all aspects of the firm's management and operations;
- Agree to maintain a minimum of 1.5 times (2 times, in the case of a 15% combination) the total capital

requirement specified in Rule 104.20² with respect to the combined entity's stocks;

- Agree to maintain 2 times (2.5 times, in the case of a 15% combination) the capital requirement specified in Rule 104.20 with respect to each of the combined entity's stocks that are component stocks of the Standard and Poor's 500 Stock Price Index; and
- Agree that all capital required to be dedicated to specialist operations be accounted for separate and apart from any other capital of the combined entity, and that such specialist capital may not be used for any other aspect of the combined entity's operations.

The Exchange is also proposing to require that proponents of a proposed combination that would result in a specialist unit accounting for more than five percent, but less than or equal to 10%, of a concentration measure, maintain 1.5 times the capital requirement specified in Rule 104.20 with respect to each of the combined entity's stocks that are components stocks of the Standard and Poor's 500 Stock Price Index.

The Exchange believes that these new requirements are appropriate in that the requirements are intended to minimize the risk of financial and/or operational failure of larger-sized units, and to ensure that such units have sufficient, separately dedicated capital with which to meet their market making responsibilities.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act") for this proposed 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. The proposed amendments are consistent with these objectives in that they address concerns about capitalization, operational efficiency, and risk management where proposed combinations would result in large sized specialist units.

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

The Exchange does not believe that the proposed rule change will impose

²NYSE Rule 104.20 lists the capital requirements of specialist units with respect to the requisite: position of trading units it is capable of assuming for various forms of securities; net liquid assets; and minimum capital requirement it is capable of meeting with its own net liquid assets.

¹ The measures include specialist share of:

- Allocation for all listed common stocks
- Allocation for the 250 most active listed common stocks
- Total share volume of stock trading on the Exchange
- Total dollar value of stock trading on the Exchange.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Within 35 days of the 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 its 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 the 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. 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-94-46 and should be submitted by January 26, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-232 Filed 1-4-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-35172; File No. SR-NASD-94-79]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to an Interim Extension of the OTC Bulletin Board® Service Through January 31, 1995

December 28, 1994.

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 December 23, 1994, the National Association of Securities Dealers, Inc. ("NASD") 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 NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is simultaneously approving the proposal.

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

On June 1, 1990, the NASD, through a subsidiary corporation, initiated operation of the OTC Bulletin Board Service ("OTCBB Service" or "Service") in accord with the Commission's approval of File No. SR-NASD-88-19, as amended.¹ The OTCBB Service provides a real-time quotation medium that NASD member firms can elect to use to enter, update, and retrieve quotation information (including unpriced indications of interest) for securities traded over-the-counter that are neither listed on The Nasdaq Stock MarketSM nor on a primary national securities exchange (collectively referred to as "OTC" Equities).² Essentially, the Service supports NASD members' market making in OTC Equities through authorized Nasdaq Workstation units. Real-time access to quotation information captured in the Service is available to subscribers of Level 2/3 Nasdaq service as well as subscribers of vendor-sponsored services that now carry OTCBB Service data. The Service is currently operating

¹ Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19124 (May 8, 1990).

² With the Commission's January 1994 approval of File No. SR-NASD-93-24, the universe of securities eligible for quotation in the OTCBB now includes certain equities listed on regional stock exchanges that do not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape Association. Securities Exchange Act Release No. 33507 (January 24, 1994), 59 FR 4300 (order approving File No. SR-NASD-93-24).

under interim approval that expires on December 31, 1994.³

The NASD hereby files this proposed rule change, pursuant to Section 19(b)(1) of the Act and Rule 19b-4 thereunder, to obtain authorization for an interim extension of the Service through January 31, 1995. During this interval, there will be no material change in the OTCBB Service's operational features, absent Commission approval of a corresponding Rule 19b-4 filing.

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

1. Purpose

The purpose of this filing is to ensure continuity in the operation of the OTCBB Service while the Commission considers an earlier NASD rule filing (File No. SR-NASD-92-7) that requested permanent approval of the Service.⁴ For the month ending November 30, 1994, the Service reflected the market making positions of 378 NASD member firms displaying quotations/indications of interest in approximately 5,223 OTC Equities.

During the proposed extension, foreign securities and American Depositary Receipts (collectively, "foreign/ADR issues") will remain subject to the twice-daily, update limitation that traces back to the Commission's original approval of the OTCBB Service's operation. As a result, all priced bids/offers displayed in the Service for foreign/ADR issues will remain indicative.

³ Securities Exchange Act Release No. 34613 (August 30, 1994), 59 FR 46278.

⁴ The Commission notes that the NASD has filed with the Commission Amendment Nos. 1 and 2 to File No. SR-NASD-92-07, concerning the eligibility of unregistered foreign securities and American Depositary Receipts for inclusion in the OTCBB. The amendments were published in the **Federal Register** for comment on November 18, 1994. See Securities Exchange Act Release No. 34956 (November 9, 1994), 59 FR 59808.