

When volatility in the SOES environment causes market makers to widen spreads or to change quotes in anticipation of waves of SOES orders, quotes in the Nasdaq market become more volatile and may be misleading to the investing public. Accordingly, absent continuation of the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature, the quotations published by Nasdaq may not reflect the true market in a security and, as a result, there may be short-term volatility and loss of liquidity in Nasdaq securities, to the detriment of the investing public. Further, the continuation of the automated refresh feature will ensure that a market maker's quotation is updated after an exposure limit is exhausted. Uninterrupted use of this function will maintain continuous quotations in Nasdaq as market makers exhausting their exposure limits in SOES will not be subject to a "closed quote" condition or an unexcused withdrawal from the market.

Finally, the NASD believes that the proposed rule change is consistent with significant national market system objectives contained in Section 11A(a)(1)(C) of the Act. This provision states it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure, among other things, (i) economically efficient execution of securities transactions; (ii) fair competition among brokers and dealers; and (iii) the practicality of brokers executing investor orders in the best market. Specifically, the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature advance each of these objectives by preserving the operational efficiencies of SOES for the processing of small investors' orders, by maintaining current levels of market maker participation through reduced financial exposure from unpreferred orders, and by reducing price volatility and the widening of market makers' spreads in response to the practices of order entry firms active in SOES.

In addition, for the same reasons provided by the SEC when it approved the Interim SOES Rules that are cited above in the text accompanying footnotes 7 through 14, the NASD believes that the proposed rule change is consistent with Sections 15A(b)(6), 15A(b)(9), 15A(b)(11) and 11A(a)(1)(C) of the Act.

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

The NASD believes that the proposed rule change will not result in 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

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 NASD 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. 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 for 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-95-8 and should be submitted by March 14, 1995.

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

Margaret H. MacFarland,

Deputy Secretary.

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[Release No. 34-35370; File No. SR-NASD-94-05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Time Period for the Exchange of Documents Before an Arbitration Hearing

February 14, 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 February 1, 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 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 NASD is proposing to amend Section 32(c) of the NASD Code of Arbitration Procedure ("Code").¹ Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

Code of Arbitration Procedure

* * * * *

General Provisions Governing Per-Hearing Proceedings

Sec. 32.

* * * * *

(c) Pre-Hearing Exchange. At least [ten (10)] *Twenty (20)* calendar days prior to the first scheduled hearing date, all parties shall serve on each other copies of documents in their possession they intend to present at the hearing and shall identify witnesses they intend to present at the hearing. The arbitrators may exclude from the arbitration any documents not exchanged or witnesses not identified. This paragraph does not require service of copies of documents or identification of witnesses which parties may use for cross-examination or rebuttal.

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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

¹ *NASD Manual*, Code of Arbitration Procedure, Part III, Sec. 32(c) (CCH) ¶ 3732.

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

Section 32(c) currently requires all parties to serve on each other copies of documents in their possession they intend to present at the hearing and to identify witnesses they intend to present at the hearing not less than 10 calendar days prior to the first scheduled hearing date. Parties often request additional discovery as a result of information obtained through the exchange of documents. These requests create a significant burden on the NASD's Arbitration Department, which currently must respond in a short period of time to numerous requests for additional discovery that arise from the exchange of documents intended to be used by the parties at the hearing. These requests also create a significant burden on the arbitrators and the parties. Accordingly, the NASD is proposing to amend Section 32(c) of the Code to increase the amount of time before a hearing where the parties are required to exchange documents from 10 to 20 days.² The proposed rule change is intended to reduce the burden to the Arbitration Department, arbitrators and the parties in responding to last minute discovery requests by increasing the time for exchanging pre-hearing memoranda.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act³ in that increasing the time for exchange of documents prior to arbitration hearing will facilitate the arbitration process by providing a more reasonable time frame in which to address last minute discovery requests and by reducing the burdens on the forum staff, arbitrators and the parties in dealing with such requests.

(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

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., 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 file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

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. 34-35373; File No. SR-NYSE-94-42]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Mailing of Interim Financial Statements to Shareholders

February 14, 1995.

On December 1, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to 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 require corporations that distribute interim reports to shareholders to distribute such reports to both registered and beneficial shareholders.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35092 (December 12, 1994), 59 FR 65554 (December 20, 1994). No comments were received on the proposal.

Currently, the NYSE requires listed companies to publish interim earnings statements as press reports, but does not require that such statements also be sent to shareholders. The rule change to paragraph 203.02 of the NYSE's Listing Company Manual will continue to make the distribution of interim reports to shareholders voluntary, but will require that corporations choosing to distribute interim reports to shareholders must distribute the reports to both registered and beneficial shareholders.

The NYSE proposal is the product of a review by various industry groups, including the American Society of Corporate Secretaries and the Securities Industry Association, of listed companies' dissemination of interim earnings reports to shareholders. The groups have been attempting to achieve some uniformity among listed companies in the handling of interim earnings reports. Presently, while some listed companies distribute interim reports to both record and beneficial shareholders, some listed companies only send interim reports to record shareholders, and some do not send interim reports to any shareholders. The cost of providing interim reports to beneficial shareholders has been identified as a factor that discourages listed companies from making a full distribution of interim listed companies from making a full distribution of interim reports. Because broker-dealers that hold investors' securities in the

² The Securities Industry Conference on Arbitration approved the proposed rule change as an amendment to the Uniform Code of Arbitration at its meeting on October 21, 1994.

³ 15 U.S.C. 78o-3.

¹ 15 U.S.C. 78s(b)(1) (1988).

² CFR 240.19b-4 (1993).