

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, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to the file number SR-NSCC-95-02 and should be submitted by March 31, 1995.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NSCC-95-02) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Jonathan G. Katz,**  
Secretary.

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[Release No. 34-35454; File No. SR-NASD-94-62, Amendment No. 2]

**Self-Regulatory Organizations; Notice of Filing of Amendment No. 2 to Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Limit Order Protection for Member-to-Member Limit Order Handling on Nasdaq**

March 8, 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 March 7, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") an amendment to 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 recently proposed to amend SR-NASD-94-62 relating to limit order protection for member-to-member limit order handling in The Nasdaq Stock Market.<sup>1</sup> Currently, the NASD's Interpretation to the Rules of Fair Practice<sup>2</sup> makes it a violation of just and equitable principles of trade for a member firm to trade ahead of its own customer's limit orders. That amendment clarified that the "terms and conditions" exception to the Interpretation applies only to limit orders from institutional accounts, whether such limit orders come from a firm's own customers or are member-to-member limit orders. The term "institutional account" is defined in Article III, Section 21(c)(4) of the Rules of Fair Practice.<sup>3</sup> The NASD now is proposing to amend the proposed rule change to provide that the "terms and conditions" exception to the Interpretation also applies to limit orders that are 10,000 shares or more, unless such orders are less than \$100,000 in value, as well as to limit orders from institutional accounts. Below is the text of the proposed rule change. Proposed new language, including the language that was added in the original proposal, is italicized; language to be deleted is bracketed.

**Limit Order Protection Interpretation to Article III, Section 1 of the NASD Rules of Fair Practice**

To continue to ensure investor protection and enhance market quality, the NASD Board of Governors is issuing an Interpretation to the Rules of Fair Practice dealing with member firm treatment of [their] customer limit orders in Nasdaq securities. This Interpretation will require members acting as market makers to handle [their] customer limit orders with all due care so that market makers do not "trade ahead" of those limit orders. Thus, members acting as market makers that handle customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal

or superior to that of the limit order without executing the limit order, provided that, prior to September 1, 1995, this prohibition shall not apply to customer limit orders that a member firm receives from another member firm and that are greater than 1,000 shares. Such orders shall be protected from executions at prices that are superior but not equal to that of the limit order. In the interests of investor protection, the NASD is eliminating the so-called disclosure "safe harbor" previously established for members that fully disclosed to their customers the practice of trading ahead of a customer limit order by a market-making firm.

**Interpretation**

Article III, Section 1 of the Rules of Fair Practice states that:

A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.

The Best Execution Interpretation states that: In any transaction for or with a customer, a member and persons associated with a member shall use reasonable diligence to ascertain the best inter-dealer market for the subject security and buy or sell in such a market so that the resultant price to the customer is as favorable as possible to the customer under prevailing market conditions. Failure to exercise such diligence shall constitute conduct inconsistent with just and equitable principles of trade in violation of Article III, Section 1 of the Rules of Fair Practice.

In accordance with Article VII, Section 1(a)(2) of the NASD By-Laws, the following interpretation under Article III, Section 1 of the Rules of Fair Practice has been approved by the Board:

A member firm that accepts and holds an unexecuted limit order from a customer (whether its own customer or a customer of another member) in a Nasdaq security and that continues to trade the subject security for its own market-making account at prices that would satisfy the customer's limit order, without executing that limit order, [under the specific terms and conditions by which the order was accepted by the firm,] shall be deemed to have acted in a manner inconsistent with just and equitable principles of trade, in violation of Article III, Section 1 of the Rules of Fair Practice, provided that, until September 1, 1995, customer limit orders in excess of 1,000 shares received from another member firm shall be protected from the market maker's executions at prices that are superior but not equal to that of the limit order,

<sup>1</sup> See Securities Exchange Act Release No. 35391 (Feb. 16, 1995), 60 FR 9878 (Feb. 22, 1995). Notice of the proposed rule change, together with the substance of the proposal as initially filed, was provided by issuance of a Commission release (Securities Exchange Act Release No. 35122, Dec. 20, 1994) and by publication in the **Federal Register** (59 FR 66389, Dec. 23, 1994).

<sup>2</sup> NASD Manual, Rules of Fair Practice, Art. III, Sec. 1 (CCH) ¶ 2151.07.

<sup>3</sup> NASD Manual, Rules of Fair Practice, Art. III, Sec. 21 (CCH) ¶ 2171.

<sup>11</sup> 17 CFR 200.30-3(a)(12) (1994).

and provided further, 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: (1) for customer accounts that meet the definition of an "institutional account" as that term is defined in Article III, Section 21(c)(4) of the Rules of Fair Practice; or (2) 10,000 shares or greater, unless such orders are less than \$100,000 in value. Nothing in this section, however, requires members to accept limit orders from *any* customer[s].

By rescinding the safe harbor position and adopting this Interpretation of the Rules of Fair Practice, the NASD Board wishes to emphasize that members may not trade ahead of customer limit orders in their market-making capacity even if the member had in the past fully disclosed the practice to its customers prior to accepting limit orders. The NASD believes that, pursuant to Article III, Section 1 of the Rules of Fair Practice, members accepting and holding unexecuted customer limit orders owe certain duties to their customers and the customers of other member firms that may not be overcome or cured with disclosure of trading practices that include trading ahead of the customer's order. The terms and conditions under which institutional account or appropriately sized customer limit orders are accepted must be made clear to customers at the time the order is accepted by the firm so that trading ahead in the firms' market making capacity does not occur. For purposes of this Interpretation, a member that controls or is controlled by another member shall be considered a single entity so that if a customer's limit order is accepted by one affiliate and forwarded to another affiliate for execution, the firms are considered a single entity and the market making unit may not trade ahead of that customer's limit order.

The Board also wishes to emphasize that all members accepting customer limit orders owe those customers duties of "best execution" regardless of whether the orders are executed through the member's market making capacity or sent to another member for execution. As set out above, the best execution Interpretation requires members to use reasonable diligence to ascertain the best inter-dealer market for the security and buy or sell in such a market so that the price to the customer is as favorable as possible under prevailing market conditions. The NASD emphasizes that order entry firms should continue to routinely monitor the handling of their

customers' limit orders regarding the quality of the execution received.

\* \* \* \* \*

## **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 its 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*

The purpose of the amendment to the proposed rule change is to expand the Interpretation's "terms and conditions" exception to the protection of limited orders. The NASD is amending its proposal to permit member firms to negotiate terms and conditions for certain larger sized customer orders from accounts other than institutional accounts ("retail accounts").

The NASD believes that the terms and conditions exception to the handling of limit orders should apply not only to customer orders from institutional accounts, but also to other orders that are usually perceived of as "institutional" in nature. To ensure that markets makers are able to negotiate regarding the handling of such orders, the NASD is proposing to permit markers to negotiate terms and conditions with respect to orders of retail accounts that are 10,000 shares or greater, unless such orders are less than \$100,000 in value. This numerical size limit is intended to ensure that ordinary limit orders from detail accounts are not subject to the terms and conditions exception.

The provision allows market makers to negotiate specific order handling procedures with parties that deal in larger sized orders. Therefore, market makers can employ appropriate strategies in filling larger sized orders. The order sizes contained in this amendment are intended to ensure that the Interpretation provides limit order protection for retail investors, while maintaining the ability of market makers to negotiate with respect to institutional-sized orders, whether account customers constitute institutional accounts or retail accounts.

Accordingly, the amendment provides that a member firm that accepts a limit order from a person or entity that does not fall within the definition of institutional account may not initiate the negotiation of any terms and conditions on the acceptance of that limit order, unless that order is for 10,000 shares or more and is for a price of \$100,000 or greater. For example, if an order were for 10,000 shares, but the price per share were only \$5.00, the total order value would be \$50,000. The order would not qualify for the terms and conditions exception because the total value of the order would be less than \$100,000. This amendment does not affect the ability of a member firm to negotiate special terms and conditions with the customer of an institutional account, or its representative, that permit the firm to trade ahead of or at the same price as the limit order, regardless of the size or value of that order. The amended Interpretation would apply to limit orders placed by the firm's own customers and member-to-member limit orders.

The NASD believes that this approach accurately reflects the ordinary framework in which firms and institutions typically negotiate the conditions under which an institution's limit order is to be handled. Moreover, in its approval of the original NASD Interpretation regarding the handling of customer limit orders,<sup>4</sup> the Commission specifically indicated its view that the terms and conditions language of the original Interpretation was included in the NASD Rule to permit special treatment for institutional customer limit orders. In addition, in its own proposal regarding customer limit order protection of Nasdaq securities<sup>5</sup> the Commission solicited comment on the "terms and conditions" provisions in its rule, which would allow a market maker to set special conditions to allow it to employ the appropriate strategy in filling an institutional customer's order without being subjected to the requirements of the proposed rule. In the course of that discussion, the Commission proposed that measurable characteristics, such as numbers of shares, or dollar value of the order, should be used as means to distinguish retail orders from institutional orders with respect to terms and conditions.

Of course, the clarification of the Interpretation continues to permit a member to establish with its customers

<sup>4</sup> See Securities Exchange Act Release No. 34279 (June 29, 1994), 59 FR 34883 (July 7, 1994).

<sup>5</sup> Securities Exchange Act Release No. 34753 (Sept. 29, 1994), 59 FR 50867 (Oct. 6, 1994) (proposing 17 CFR 240.15c5-1).

or the order entry firm commissions or commission-equivalents regarding the handling of a limit order, provided that the member makes those charges clear to the customer. In this connection, the NASD notes that Nasdaq market makers are free to negotiate additional compensation from order routing firms to the extent that such compensation is economically and competitively justified. Similarly, the Interpretation continues in place the understanding that nothing in the Interpretation would obligate a market maker to accept limit orders from any or all customers or member firms.

The NASD believes that the proposed rule change is consistent with Section 15A(b)(6) in that these proposed changes are designated to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in these securities, to remove impediments to and to perfect the mechanism of free and open market and a national market system, and in general to protect investors and the public interest.

*(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. Accordingly, while the NASD will monitor carefully for any adverse competitive effects of the Interpretation, it believes that any adverse effects are far outweighed by the enhanced execution opportunities provided public investors.

*(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 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, 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 SR-NASD-94-62, Amendment No. 2 and should be submitted by March 27, 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.*

[FR Doc. 95-6088 Filed 3-8-95; 12:34 pm]

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**DEPARTMENT OF STATE**

**Bureau of Political-Military Affairs**

[Public Notice 2176]

**Imposition of Chemical and Biological Weapons Proliferation Sanctions on Foreign Persons**

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** The United States Government has determined that three companies have engaged in chemical weapons proliferation activities that require the imposition of sanctions pursuant to the Arms Export Control Act and the Export Administration Act of 1979 (the authorities of which were most recently continued by Executive Order 12924 of August 19, 1994), as amended by the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991.

**EFFECTIVE DATE:** February 18, 1995.

**FOR FURTHER INFORMATION CONTACT:** Vann H. Van Diepen, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Political-

Military Affairs, Department of State (202-647-4930).

**SUPPLEMENTARY INFORMATION:** Pursuant to Sections 81(a) and 81(b) of the Arms Export Control Act (22 U.S.C. 2798(a), 2798(b)), Sections 11C(a) and 11C(b) of the Export Administration Act of 1979 (50 U.S.C. app. 2410c(a), 2410c(b)), Section 305 of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (P.L. 102-182), Executive Order 12851 of June 11, 1993, and State Department Delegation of Authority No. 145 of February 4, 1980, as amended, the United States Government determined that the following foreign persons, currently operating in the Asia-Pacific region, have engaged in chemical weapons proliferation activities that require the imposition of the sanctions described in Section 81(c) of the Arms Export Control Act (22 U.S.C. 2798(c)) and Section 11C(c) of the Export Administration Act of 1979 (50 U.S.C. app. 2410c(c)):

1. Asian Ways Limited
2. WorldCo Limited
3. Mainway International

Accordingly, the following sanctions are being imposed:

(A) Procurement Sanction.—The United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from the sanctioned persons; and

(B) Import Sanction.—The importation into the United States of products produced by the sanctioned persons shall be prohibited.

These sanctions apply not only to the companies described above, but also to their divisions, subunits, and any successor entities. Questions as to whether a particular transaction is affected by the sanctions should be referred to the contact listed above. The sanctions shall commence on February 18, 1995. They will remain in place for at least one year and until further notice.

These measures shall be implemented by the responsible agencies as provided in Executive Order 12851 of June 11, 1993.

Dated: March 1, 1995.

**Thomas E. McNamara,**

*Assistant Secretary of State for Political-Military Affairs.*

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