

[Release No. 34-35800; File No. SR-BSE-95-10]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Inc., Relating to Amendments to the Pilot Program Regarding Certain Procedures for the Handling of Market-on-Close Orders on Non-Expiration Days

June 1, 1995.

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 May 19, 1995, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change, and on May 31, 1995, filed Amendment No. 1 to the proposed rule change,³ as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The BSE has requested accelerated approval of the proposal. 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 Exchange seeks to adopt procedures for the handling of market-on-close orders on expiration days, non-expiration days and in market conditions where New York Stock Exchange, Inc. ("NYSE") Rule 80A is in effect. These procedures mirror the procedures in place on the primary markets in order to ensure equal treatment of orders in both markets.

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 III 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 is to adopt certain procedures to mirror those of the primary markets for the handling of market-on-close ("MOC") orders on expiration days⁴ and non-expiration days so that the BSE does not become a haven for MOC orders that are prohibited on the primary markets.⁵ In this way, all orders sent to the Exchange will receive equal treatment to orders sent to the primary markets. The proposed rule change proposes that on expiration days, all MOC orders in all stocks will be prohibited after 3:40 p.m., eliminating the limitation related to a strategy including stock index futures, stock index options or options on stock index futures in expiring contracts. The proposed procedures also include procedures applicable on non-expiration days, such as: (a) Providing a 3:50 p.m. deadline for the entry of all MOC orders in all stocks, (b) prohibiting the cancellation or reduction of any MOC order in any stock after 3:50 p.m., (c) publishing order imbalances of 50,000 shares or more as soon as practicable after 3:50 p.m. in the pilot stocks, stocks being added to or dropped from an index, and in any other stock with the approval of a Floor Official and (d) limiting the entry of MOC orders after 3:50 p.m. to offset published imbalances. With respect to item (b) above, the Exchange will permit cancellations of MOC orders after 3:50 p.m. in those instances where a legitimate error has been made. The term "pilot stocks" refers to the list of stocks designated by the NYSE as pilot stocks for purposes of its auxiliary closing procedures.⁶

The proposed rule change also proposes certain procedures for the handling of MOC orders in market

conditions where the NYSE's Rule 80A is in effect. On non-expiration days, if an MOC index arbitrage order to buy (sell) to establish or increase a position is entered, and Rule 80A subsequently goes into effect because of significant upward (downward) market movement, the MOC order must be canceled, regardless of the time Rule 80A goes into effect. If Rule 80A goes into effect prior to 3:50 p.m., the MOC order may be re-entered with the instruction "buy minus" ("sell plus"). If Rule 80A goes into effect after 3:50 p.m. and there is a published imbalance in the subject stock the MOC order may be re-entered with the instruction "buy minus" ("sell plus") to offset the imbalance.

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2. Statutory Basis

The statutory basis for the proposed rule is Section 6(b)(5) of the Exchange Act in that it is designed to prevent fraudulent and manipulative acts and practices, 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

The Exchange does not believe that the proposed rule change will 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

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

⁴The term "expiration days" refers to both (1) the trading day, usually the third Friday of the month, when some stock index options, stock index futures and options on stock index futures expire or settle concurrently ("Expiration Fridays") and (2) the trading day on which end of calendar quarter index options expire ("QIX Expiration Days").

⁵The BSE's auxiliary closing procedures for expiration days have been approved on a pilot basis until October 31, 1995. See Securities Exchange Act Release No. 34918 (October 31, 1994), 59 FR 55504 ("1994 Pilot Approval Order").

⁶The Expiration Friday pilot stocks consist of the 50 most highly capitalized Standard & Poors ("S&P") 500 stocks and any component stocks of the Major Market Index ("MMI") not included therein. The QIX Expiration Day pilot stocks consist of the 50 most highly capitalized S&P 500 stocks, any component stocks of the MMI not included therein and the 10 highest weighted S&P Midcap 400 stocks.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Karen A. Aluise, Assistant Vice President, BSE to Elisa Metzger, Senior Counsel, SEC, dated May 31, 1995.

III. 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 at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR-BSE-95-10 and should be submitted by [insert date 21 days from date of publication],

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular with the requirements of Section 6⁷ of the Act. In particular, the proposal is consistent with the Section 6(b)(5)⁸ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and in general, to protect investors and the public interest.

In recent years, the self-regulatory organizations have instituted certain safeguards to minimize excess market volatility that may arise from the liquidation of stock positions related to trading strategies involving index derivative products. For instance, since 1986, the NYSE has utilized auxiliary closing procedures on expiration days. These procedures allow NYSE specialists to obtain an indication of the buying and selling interest in MOC orders at expiration and, if there is a substantial imbalance on one side of the market, to provide the investing public with timely and reliable notice thereof and with an opportunity to make

appropriate investment decisions in response. Based on the NYSE's experience,⁹ the Commission believes that the MOC order handling requirements work relatively well and may result in more orderly markets at the close on expiration days.

In today's highly competitive market environment, however, it is possible that a regional exchange, which trades NYSE-listed stocks but does not have comparable closing procedures, could be utilized by market participants to enter MOC orders prohibited on the NYSE. Although the Commission has no reason to believe that the BSE market has become a significant alternative market to enter otherwise prohibited MOC orders, the Commission agrees with the BSE that, if this possibility were realized, it could have a negative impact on the fairness and orderliness of the national market system.¹⁰ Accordingly, the Commission believes that it is reasonable for the BSE to adopt procedures for the handling of MOC orders that mirror the NYSE's, thereby ensuring the equal treatment of orders in both markets and, in the event of unusual market conditions, offering the BSE the same benefits in terms of potentially reducing volatility.

In this regard, the Commission notes that the proposed rule change will standardize the BSE's closing procedures on expiration days with those on the NYSE.¹¹ Specifically, on expiration days, the BSE proposal will impose a 3:40 p.m. deadline for entry of *all* MOC orders. In conjunction with the prohibition on cancellation or reduction of any MOC order after 3:40 p.m., this requirement should allow the specialist to make a timely and reliable assessment, for every stock, of MOC order flow and its potential impact on the closing price. While the Commission recognizes that 3:40 p.m. is relatively near the close, the Commission previously has determined that such a deadline strikes a reasonable balance between the need to effectuate an orderly closing and the need to avoid unduly infringing upon legitimate trading strategies.¹²

⁹The NYSE has submitted to the Commission several monitoring reports describing its experience with the auxiliary closing procedures. For further discussion of the NYSE's results, see Securities Exchange Act Release No. 34916 (October 31, 1994), 59 FR 55507.

¹⁰For example, if MOC orders prohibited on the NYSE were entered instead on the BSE, unusually large MOC order imbalances on the regional exchange could contribute to overall market volatility.

¹¹See Securities Exchange Act Release No. 35589 (April 10, 1995), 60 FR 19313.

¹²See, e.g., Securities Exchange Act Release No. 33639 (February 17, 1994), 59 FR 9295.

The amended procedures for expiration days will continue to require that, as soon as practicable after 3:40 p.m., BSE specialists disseminate substantial imbalances in the pilot stocks. Thereafter, no MOC orders may be entered except to offset a published imbalance in a pilot stock. In this regard, the BSE pilot program combines early submission of MOC orders with prompt dissemination of imbalances that reflect actual investor interest. As noted in prior Commission orders approving these procedures,¹³ the BSE should have sufficient opportunity to attract any contra-side interest necessary to alleviate substantial MOC order imbalances in the pilot stocks and to dampen their effect on the closing price.

In addition, under the proposed rule change, the BSE will adopt MOC order handling requirements for non-expiration days that are substantially similar to those in place for expiration days. This will allow members and member organizations to follow comparable procedures at the close on all trading days. Although there is less likelihood of an influx of MOC orders at the close of non-expiration days, certain trading and asset allocation strategies could employ MOC orders. The 3:50 p.m. deadline for MOC order entry and cancellation, as well as the requirement to disseminate MOC orders consisting of 50,000 shares or more as soon as practicable after 3:50 p.m., on non-expiration days should help the specialist make a timely and reliable assessment of MOC order flow and its potential impact on the closing price and also should ensure that any imbalance publications reflect actual investor interest. In the Commission's opinion, a 3:50 p.m. deadline strikes a more appropriate balance for non-expiration days (as opposed to the 3:40 p.m. deadline for expiration days) given the reduced likelihood of substantial MOC order imbalances due to derivatives-related trading strategies.

In the event of unusual market conditions, the Commission believes that the amended procedures for non-expiration days will offer benefits in terms of assessing volatility at the close of trading in the same manner as the BSE's procedures for expiration days. Additionally, the Commission notes that, by permitting a Floor Official to authorize the publication of substantial MOC order imbalances on non-expiration days in any stock, the proposal should increase the information available to market participants and provide BSE specialists

¹³See 1994 Pilot Approval Order, *supra*, note 5.

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(5).

with a mechanism, if necessary, to attract contra-side interest in any stock.

The Commission finds it appropriate for the BSE to provide for procedures for the handling of MOC orders in market conditions when the NYSE's Rule 80A is in effect. The Commission believes that the rule change clearly informs market participants of the manner in which MOC order can be placed when the NYSE's Rule 80A is in effect. The Commission continues to believe that the provisions of NYSE Rule 80A provide a useful means of addressing market volatility.¹⁴

The Commission is approving the amendments to the BSE's auxiliary closing procedures for expiration days and non-expiration days as part of the existing pilot program that expires on October 31, 1995.

The Commission finds good cause for approving the proposed rule change prior the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. This will permit the proposed amendments to be effective simultaneously with the NYSE's amendments to the procedures for handling MOC orders.¹⁵ In addition, the procedures the BSE proposes to use are identical to NYSE procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.¹⁶

It is therefore ordered, pursuant to Section 19(b)(2)¹⁷ that the proposed rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Jonathan G. Katz,
Secretary.

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[Release No. 34-35801; File No. SR-NASD-95-12]

Self-Regulatory Organizations; Notice of Filing Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Advertising and Sales Literature Filing and Review Requirements Under the Rules of Fair Practice and the Government Securities Rules

June 2, 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 May 10, 1995,¹ 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.

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

The NASD is herewith filing a proposed rule change to Article III, Section 35 of the Rules of Fair Practice and Section 8 of the Government Securities Rules. Proposed new language is italicized and proposed deletions are bracketed.

ARTICLE III

Rules of Fair Practice

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Communications With the Public

Sec. 35.

(a) Definitions

(1) Advertisement—For purposes of this section and any interpretation thereof, "advertisement" means material published, or designed for use in, a newspaper, magazine or other periodical, radio, television, telephone or tape recording, videotape display, signs or billboards, motion pictures, telephone directories (other than listings), *electronic* or other public media.

(2) Sales literature—For purposes of this section and any interpretation thereof, "sales literature" means any written or *electronic* communication distributed or made generally available to customers or the public, which communication does not meet the

foregoing definition of "advertisement." Sales literature includes, but is not limited to, circulars, research reports, market letters, performance reports or summaries, form letters, *telemarketing scripts*, seminar texts, and reprints or excerpts of any other advertisement, sales literature or published article.

(b) Approval and Recordkeeping

(1) Each item of advertising and sales literature shall be approved by signature or initial, prior to use or *filing with the NASD*, by a registered principal [(or his designee)] of the member.

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(c) Filing Requirements and Review Procedures

(1) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) not included within the requirements of Subsection (c)(2) of this section, and public direct participation programs (as defined in Article III, Section 34 of the Rules of Fair Practice) shall be filed with the Association's Advertising Regulation Department within 10 days of first use or publication by any member. *The member must provide with each filing the actual or anticipated date of first use.* Filing in advance of use is recommended. Members are not required to file advertising and sales literature which have previously been filed and which are used without change. Any members filing any investment company advertisement or sales literature pursuant to this Subsection that includes or incorporates rankings or comparisons of the investment company with other investment companies shall include a copy of the ranking or comparison used in the advertisement or sales literature.

(2) Advertisements concerning collateralized mortgage obligations registered under the Securities Act of 1933, and advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) that include or incorporate rankings or comparisons of the investment company with other investment companies where the ranking or comparison category is not generally published or is the creation, either directly or indirectly, of the investment company, its underwriter or an affiliate, shall be filed with the Association's Advertising Regulation Department for review at least 10 days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if

¹⁴ See Securities Exchange Act Release No. 29854 (October 24, 1991), 56 FR 55963.

¹⁵ See Release No. 35589, supra note 11.

¹⁶ No comments were received in connection with the most recent proposed rule change which modified the NYSE procedures. See Release No. 35589, supra note 11.

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ The proposed rule change was initially submitted on April 10, 1995, but was amended on May 10, 1995, in order to make technical changes and clarify rule language.