

a related participant.<sup>4</sup> The SBO settlement netting process was not intended for trades between multiple accounts of a participant or between a participant's account and an account of a related participant. The inclusion of these types of trades was not contemplated when the MBSCC cash adjustment procedures were developed, and the inclusion could cause a perception that participants might receive greater or lesser amounts than originally intended depending upon the amount of internal trades submitted. Participants may record such trades on a trade-for-trade basis.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it will facilitate the prompt and accurate clearance and settlement of securities transactions.<sup>5</sup>

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

MBSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

MBSCC advised participants by an administrative bulletin dated October 6, 1995, that it would file the proposed rule change with the Commission. No written comments relating to the proposed rule change have been received.

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

Within thirty-five 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 ninety 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.

<sup>4</sup> The term "related participant" means any affiliate (as defined in Rule 12b-2 of the Act) or entity that is used or intended to be used in whole or in part to contravene the purposes of the proposed rule change. Letter from Anthony H. Davidson, MBSCC, to Michele J. Bianco, Division of Market Regulation, Commission (November 1, 1995).

<sup>5</sup> 15 U.S.C. § 78q-1 (1988).

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 provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

All submissions should refer to the file number SR-MBSCC-95-08 and should be submitted by January 3, 1996.

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

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 95-30300 Filed 12-12-95; 8:45 am]

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[Release No. 34-36563; File No. SR-NASD-95-57]

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Policy Statement on Market Closings**

December 7, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on November 22, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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.

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

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

The NASD proposes to amend its Policy Statement on Market Closings ("Statement" or "Policy Statement"), adopted pursuant to Article VII, Section 3 of the NASD By-Laws, to: (1) extend the expiration date of the Statement to December 31, 1997; and (2) reflect regulatory developments since the Statement was first adopted in 1988. The amended Statement is as follows (additions are italicized; deletions are bracketed):

NASD Board of Governors Policy Statement on Market Closing  
September 20, 1988

*Amended [insert date] 1995*

*In 1988, [T] the Board of Governors of the National Association of Securities Dealers, Inc. [has] carefully considered the numerous proposals resulting from the October 1987 market break including the Report of the NASD Committee on the Quality of Markets and the "circuit breaker" proposal recommended by the President's Working Group on Financial Markets. The Working Group proposal recommend[s]ed that all U.S. markets for equity and equity-related products, i.e., stocks, individual stock options, and stock index options and futures, halt trading for [one hour] certain specified periods if the Dow Jones Industrial Average [{"DJIA"}] decline[s]d 250 points or 400 points from its previous day's closing level [and for two hours if the DJIA declines 400 points]. The proposal also recommend[s]ed specific reopening procedures and consistent index futures price limit requirements. Subsequently, the major securities exchanges adopted the recommendations of the Working Group as trading halt rules, with uniform criteria established for the coordinated implementation of trading halts across all equity and equity-related markets in the event of extraordinary market movements. The exchanges have, from time-to-time, considered amendments to such rules.*

Having reviewed the [se numerous] original proposal[s] of the Working Group, the trading halt rules adopted by the major securities exchanges and any modifications thereto, the Board of Governors [has adopted] reaffirms the position that is set forth below in this Statement of Policy.

The Board notes that while progress has been made by the markets in areas involving systems capacity, margin requirements and information sharing, a

number of recommendations from the various proposals unfortunately have not yet been either fully considered or actively pursued. The Board believes that market closings are not the answer to the potential danger of precipitous declines in market prices and that it is more important to aggressively pursue other initiatives. Among these are:

1. Congress should vest regulatory authority for all equity derivative instruments in the Securities and Exchange Commission.
2. Congress should give the Securities and Exchange Commission authority to oversee the establishment of initial or maintenance margin requirements by self-regulatory organizations for all equity instruments. Relative margin levels for equities and equity derivative instruments should be consistent across all market places.
3. The activities of clearing and settlement systems should be re-coordinated across market places to reduce financial risk for all participants. Clearing and settlement facilities for all equity derivative instruments should be unified or linked as in the options and securities markets.
4. An intermarket self-regulatory coordinating policy group (with subgroups) composed of persons at the senior management level of all self-regulatory organizations should be established to plan, communicate and coordinate with each other in the surveillance, financial, operational and technology areas and, acting with federal regulators, to formulate contingency plans for market emergencies.
5. To the extent that legislation is needed to accomplish any of these objectives, Congress should be urged by all securities industry organizations to act promptly.

We believe implementation of these recommendations would provide a more permanent and appropriate response to the events of October 1987 than would market closings based upon arbitrary formulae. They should be adopted expeditiously. Because sufficient progress on all of these matters has not yet occurred, the Board recognizes the need to consider the Working Group's proposal on "circuit breakers" and the trading halt rules adopted by the major securities exchanges as an interim step.

The Board strongly believes that the Nation's securities markets should remain open and operating during normal market hours whenever possible. The Board is opposed in principle to the implementation of "circuit breakers" that mandate market closings on the basis of arbitrary formulae. The Board supports the

[current] practice whereby individual market determine, after coordination with other markets and federal regulators, whether to close based on the character of a particular emergency situation.

The Board of Governors acknowledges that the risks imposed on any single market remaining open while all other U.S. markets have halted trading because of extraordinary price movements could be unacceptable. The Board therefore has determined that, at times when other major securities markets initiate market-wide trading halts in response to extraordinary market conditions, the NASD will, upon request from the Securities and Exchange Commission, act to halt domestic trading in all securities quoted in [the NASDAQ system] *The Nasdaq Stock Market* and domestic trading in equity or equity-related securities in the over-the-counter market.

This Policy Statement on Market Closings shall be effective until December 31, [1995] 1997 unless modified or extended prior thereto by the Board of Governors.

## 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

The Policy Statement is adopted as a stated policy of the NASD under Article VII, Section 3 of the NASD By-Laws, which provides the Association with the authority, acting through a designated committee of the NASD Board of Governors, to take appropriate action in the event of an emergency or extraordinary market conditions. Article VII, Section 3 was adopted by the NASD as a result of the events of October 1987, and the provision was enacted to enable the NASD to respond to future crises with a maximum degree of flexibility, providing properly tailored responses to

varying situations.<sup>2</sup> As originally approved, the Statement was to expire December 31, 1989, unless modified or extended prior thereto by the NASD Board of Governors.<sup>3</sup> The expiration date of the Policy Statement has previously been extended a number of times.<sup>4</sup>

Other groups, including the President's Working Group on Financial Markets (the "Working Group"), have proposed more specific, formulaic responses to the events of October 1987. One such proposal is the Working Group's proposal for "circuit breakers." The Commission requested the NASD to express its views on that proposal and the Policy Statement was adopted in response to that request.

It should be noted that the Policy Statement expresses the views of the NASD Board of Governors as of November 16, 1995 concerning progress made on the numerous proposals emanating from the October 1987 crisis. From time to time, the Board will review progress made on the recommendations set forth in the Statement as well as other developments as they may occur. The views of the Board may change and the NASD may modify or amplify the Statement accordingly.

It also should be noted that the Policy Statement sets forth the NASD's proposed response to a specific set of circumstances. The Statement does not in any way preclude the NASD from taking any other action that may be appropriate under other circumstances.

The NASD proposes to extend the expiration date of the Policy Statement two years until December 31, 1997. The NASD also proposes to make several minor modifications to the Policy Statement to reflect regulatory developments since the Statement was

<sup>2</sup>Specifically, in its release approving Article VII, Section 3 of the NASD By-Laws, the Commission stated that "the Commission believes the proposal provides the NASD with the flexibility to deal with extraordinary market conditions such as existed in October 1987." See Securities Exchange Act Release No. 26072 (September 12, 1988), 53 FR 36143.

<sup>3</sup>Securities Exchange Release No. 26198 (October 19, 1988), 53 FR 41673.

<sup>4</sup>Securities Exchange Act Release Nos. 27370 (October 23, 1989), 54 FR 43881 (approving File No. SR-NASD-89-46, extending expiration date through December 31, 1990); 28694 (December 12, 1990), 55 FR 52119 (approving File No. SR-NASD-90-60, extending expiration date through December 31, 1991); 30113 (December 20, 1991), 56 FR 67341 (File No. SR-NASD-91-70, extending expiration date through January 31, 1992); 30304 (January 29, 1992), 57 FR 4658 (approving File No. SR-NASD-92-02, extending expiration date through December 31, 1993); 33292 (December 6, 1993), 58 FR 65214 (approving File No. SR-NASD-93-70, extending expiration date through December 31, 1994); and 35133 (December 21, 1994), 59 FR 67361 (approving File No. SR-NASD-94-63, extending expiration date through December 31, 1995).

adopted in 1988. Given the growth of U.S. equity markets since 1988, however, the NASD increasingly is concerned that circuit breakers may be activated based on smaller percentage moves in the Dow Jones Industrial Average ("DJIA").<sup>5</sup> Accordingly, it is the intention of the NASD to reevaluate whether the 250- and 400-point thresholds contained in the circuit breakers are appropriate. Nevertheless, the NASD believes it is appropriate at this time to extend the effectiveness of the Policy Statement.

The NASD believes the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be 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. Specifically, by extending the effectiveness of the Policy Statement, market participants will be afforded a reasonable opportunity to assess and rationally react to extreme market conditions. In addition, extension of the Policy Statement will help to ensure that circuit breakers are coordinated across all equity and equity-related markets.

#### *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.

<sup>5</sup>Specifically, when the 250- and 400-point circuit breakers were implemented in October 1988, a 250-point move in the DJIA was approximately 11.7 percent of the Index and a 400-point move was approximately 18.7 percent of the Index. However, given the expansion and growth of U.S. equity markets since 1988, 250- and 400-point movements in the NASD now represent a much smaller percentage move in the Index. Specifically, with the NASD at 5,000, a 250-point move represents 5 percent of the Index and a 400-point move represents 8 percent of the Index.

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

The NASD requests that the Commission find good cause to accelerate the effectiveness of the proposed rule change pursuant to Section 19(b)(2) of the Act so that the effectiveness of the Policy Statement can continue uninterrupted. The NASD notes that its other proposals to extend the Statement have been subject to the full notice and comment period and that the Commission has received no adverse comments on the Statement. Accordingly, because the NASD believes that there are no changes to the Policy Statement that would necessitate the solicitation of public comment prior to Commission approval, because no adverse comments have been received in response to prior extensions of the Statement, and because the Policy will otherwise expire on December 31, 1995, the NASD requests that the Commission accelerate the effectiveness of the proposed rule change prior to the 30th day after its publication in the Federal Register.

#### *IV. Discussion*

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and, in particular, the requirements of Section 15A and the rules and regulations thereunder. Since the Commission approved the NASD's proposal in 1988, the Dow Jones Industrial Average has not experienced a one day market decline that would trigger a market halt. Nevertheless, the Commission continues to believe that circuit breaker procedures are desirable to deal with potential strains that may develop during periods of extreme market volatility, and accordingly, the Commission believes that the pilot program should be extended. The Commission also believes that circuit breakers represent a reasonable means to retard a rapid one day market decline that could have a destabilizing effect on the nation's financial markets and participants in these markets. Finally, the Commission believes that the proposed changes to the Policy Statement are minor and not of a nature to affect its operation.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register because there are no material changes being made to the current provisions, which originally

were subject to the full notice and comment procedures, and accelerated approval would enable Policy Statement to continue uninterrupted. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Sections 15A and 19(b) of the Act.<sup>6</sup>

#### *V. 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 submissions, 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 3, 1996.

#### *VI. Conclusion*

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-NASD-95-57) is hereby approved until December 31, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Margaret H. McFarland,

*Deputy Secretary.*

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<sup>6</sup>The Commission reaffirms its request that the NASD implement its Policy Statement by implementing a trading halt as quickly as practicable whenever the New York Stock Exchange and other equity markets have suspended trading. See Securities Exchange Act Release No. 27370, *supra* note 4.

<sup>7</sup> 17 U.S.C. 78s(b)(2) (1988).

<sup>8</sup> 17 CFR 200.30-3(a)(12) (1994).