

the notice to another broker-dealer from whom the securities are due not later than 12 noon, the seller's local time, on the business day preceding the date of execution of the buy-in. The specified delivery time in the retransmitted notice must not be earlier than the time specified in the original notice. The rule change modifies the existing language to provide the seller with 23½ hours to deliver the securities to the recipient that retransmitted the buy-in notice and is an improvement to the current procedures that arguably permit retransmittal to occur at the end of the previous business day, which provided the recipient with as little as 18½ hours notice.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-NASD-95-50 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

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[Release No. 34-36657; File No. SR-NASD-95-56]

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 Extension and Expansion of the NASD's Equity Option Position Limit Hedge Exemption Pilot Program

December 29, 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 November 21, 1995, 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 and II below, which Items have been prepared by the self-regulatory organization. The NASD has requested accelerated approval for the proposal. This order approves the NASD's proposal on an accelerated basis and solicits comments 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 Article III, Section 33(b)(3)(A)(5) of the NASD Rules of Fair Practice to extend, until December 31, 1997, the NASD's equity option position limit hedge exemption pilot program. The NASD is also proposing to expand the hedge exemption pilot program to permit the establishment of hedged positions up to three times the applicable basic position limit.

In addition, the NASD is requesting that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, to approve the proposed rule change prior to the thirtieth day after publication in the Federal Register.

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 III 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

On February 9, 1990, the Commission approved a NASD proposal³ to implement a two-year pilot program during which certain fully hedged equity option positions would be automatically exempt from established position⁴ and exercise limits.⁵ On

³ See Securities Exchange Act Release No. 27697 (February 9, 1990), 55 FR 5535 (February 15, 1990).

⁴ Position limits impose a ceiling on the number of option contracts in each class on the same side of the market (i.e., aggregating long calls and short puts and long puts and short calls) that can be held or written by an investor or group of investors acting in concert. Article III, Section 33(b)(3)(A) of the NASD Rules of Fair Practice currently provides that equity option position limits are 4,500, 7,500, or 10,500 contracts, depending upon the trading volume and number of outstanding shares of the underlying stock. In addition, the NASD has recently submitted to the Commission a rule proposal that would add a 20,000-contract position limit tier and a 25,000-contract position limit tier. See File No. SR-NASD-95-55.

⁵ Exercise limits restrict the number of options contracts which an investor or group of investors acting in concert can exercise within five consecutive business days. Under NASD Rules, exercise limits correspond to position limits, such

March 18, 1994, the Commission extended the NASD's hedge exemption pilot program through December 31, 1995.⁶

The NASD's hedge exemption provides for an automatic exemption from equity option position limits for accounts that have established one of the four most commonly used hedged positions⁷ and where each option contract is either (i) hedged by 100 shares of stock, (ii) hedged by securities that are readily convertible into, or economically equivalent to, such stock,⁸ or (iii) in the case of an adjusted options contract, hedged by the number of shares represented by the adjusted contract.

Under the NASD's current hedge exemption, the largest options position (combining hedged and unhedged positions) that may be established may not exceed twice the basic position limit (i.e., 9,000, 15,000, or 21,000 contracts, respectively). In addition, the hedge exemption does not change the exercise limits contained in Article III, Section 33(b)(4) of the NASD Rules of Fair Practice. Therefore, market participants are allowed to exercise, during any five consecutive business days, the same number of options contracts as set forth in the position limit for that option, including those options positions that are hedged (i.e., if the position limit for an option is 10,500 contracts and an investor has established a position of 21,000 contracts (10,500 unhedged and 10,500 hedged), the investor may exercise all 21,000 contracts during five consecutive business days).

The NASD is currently proposing two amendments to its hedge exemption pilot program. First, the NASD is

that investors in options classes on the same side of the market are allowed to exercise, during any five consecutive business days, only the number of options contracts set forth as the applicable position limit for those options classes. See Article III, Section 33(b)(4) of the NASD Rules of Fair Practice.

⁶ See Securities Exchange Act Release No. 33783 (March 18, 1994), 59 FR 14229 (March 25, 1994).

⁷ The four exempted hedge positions are: (1) Long stock and short calls; (2) long stock and long puts; (3) short stock and long calls; and (4) short stock and short puts.

⁸ The Commission notes that the NASD determines on a case-by-case basis whether an instrument that is being used as the basis for the underlying hedged positions is readily convertible into, or economically equivalent to, the security underlying the corresponding option position. In this regard, the NASD generally finds that an instrument that is not presently convertible into a security, but which will be at a future date, is not a "convertible" security for purposes of the hedge exemption. In addition, the NASD notes that if a convertible security used to hedge an option position is called for redemption by the issuer, the security would have to be converted into the underlying security immediately or the corresponding option position would have to be reduced accordingly.

¹ 15 U.S.C. § 78s(b)(1) (1988).

² 17 CFR 240.18b-4 (1994).

proposing to extend the pilot program until December 31, 1997. Second, the NASD is proposing to modify the hedge exemption to permit the establishment of hedged equity option positions up to three times the applicable basic position limit (*i.e.*, 13,500, 22,500, or 31,500 contracts).⁹ As noted above, the hedge exemption rule currently permits the establishment of hedged equity option positions up to twice the applicable basic position limit.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act.¹⁰ 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.

In particular, the NASD believes that the proposed expansion of the equity option position limit hedge exemption pilot program is warranted for the following reasons. First, permitting market participants, particularly investors with sizeable holdings, accounts, or assets, to establish larger hedged equity option positions will afford them greater flexibility to employ larger options positions when effecting their hedging strategies. Second, the higher hedged position limit exemption will likely facilitate greater activity in exchange-listed options and conventional equity options, thereby enhancing liquidity in the markets for exchange-traded options, conventional equity options, and the securities underlying those options. Third, by conforming the NASD's equity option hedge exemption rule to the hedge exemption rules in place at the options exchanges, there will be no confusion by market participants concerning

⁹The NASD notes that if File No. SR-NASD-95-55 is approved by the Commission, market participants could establish hedged positions of up to 60,000 contracts or 75,000 contracts, respectively, in those securities that qualify for the 20,000-contract position limit tier or the 25,000-contract position limit tier. In addition, under the OTC Collar Exemption, market participants could establish OTC collars where each "leg" of the collar is 50,000 contracts, in the case of a security eligible for the 20,000-contract position limit, or 62,500 contracts, in the case of a security eligible for the 25,000-contract position limit.

¹⁰ 15 U.S.C. § 78f(b)(5) (1988).

applicable position and exercise limits.¹¹

In addition, the NASD believes that the proposed expansion of the equity option position limit hedge exemption will not compromise the integrity of the options markets or jeopardize the stability of the securities markets underlying exchange-traded equity options or conventional equity options. As options positions established pursuant to the hedge exemption pilot program will continue to be hedged on a one-for-one basis with the underlying stock, the NASD does not believe that the proposed expansion of the hedge exemption pilot program will have an adverse impact on the market. In this regard, the NASD notes that the higher position limits currently available by virtue of the NASD's hedge exemption pilot program have not resulted in disruptions of the underlying stock market. Moreover, the NASD will continue to monitor the use of the position limit hedge exemption to ensure that NASD members comply with the requirements of the exemption, as well as to monitor the exemption's effect, if any, on the market.¹²

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

The NASD does not believe that the proposed rule change will impose any inappropriate burden on competition.

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 with respect to the proposed rule change.

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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the

¹¹ See Securities Exchange Act Release Nos. 36371 (October 13, 1995), 60 FR 54269 (October 20, 1995) (order approving File No. SR-CBOE-95-42); and 36409 (October 23, 1995), 60 FR 55399 (October 31, 1995) (order approving File Nos. SR-NYSE-95-31, SR-PSE-95-25, SR-Amex-95-42, and SR-Phlx-95-71).

¹² In addition, should the NASD seek permanent approval of its hedge exemption pilot program, the NASD is aware of and will comply with the Commission's request for a request on the operation of the program.

Commission, and all written communications relating to the proposed rule changes 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 filings also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-95-56 and should be submitted by January 26, 1996.

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 association, and, in particular, with the requirements of Section 15A(b)(6). Specifically, the Commission believes that the proposed extension and expansion of the NASD's equity option position limit hedge exemption pilot program will accommodate the needs of investors and market participants while at the same time furthering investor protection and the public interest.

The Commission also believes that the proposed rule change will increase the potential depth and liquidity of the equity options market as well as the underlying cash market without significantly increasing concerns regarding intermarket manipulations or disruptions of the market for the options or the underlying securities.

In addition, to the extent the potential for manipulation does increase due to the expanded hedge exemption, the Commission believes that the NASD's surveillance programs will be adequate to detect as well as to deter attempted manipulative activity. Moreover, the Commission will continue to monitor the NASD's surveillance programs to ensure that problems do not arise.

The Commission finds good cause to approve the proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Specifically, by accelerating the approval of the NASD's rule proposal, the Commission is conforming the NASD's equity option hedge exemption to identical proposals that were recently approved for the options exchanges by the

Commission.¹³ Accelerated approval of the proposed rule change will thereby provide for the desired uniformity of equity option hedge exemptions within the exchange traded options market. Any other course of action could lead to unnecessary investor confusion. In addition, the Chicago Board Options Exchange, Inc.'s ("CBOE") proposal was noticed for the entire twenty-one day comment period and generated no negative responses.¹⁴ Lastly, accelerated approval of the rule proposal will allow the NASD's hedge exemption pilot program to continue on an uninterrupted basis. Accordingly, the Commission believes that it is consistent with Section 15A(b)(6) of the Act to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2)¹⁵ of the Act that the proposed rule change (File No. SR-BASD-85-56) is hereby approved on an accelerated basis, and, accordingly, the hedge exemption pilot program as expanded herein is extended until December 31, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Jonathan G. Katz,
Secretary.

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[Release No. 34-36658; File No. SR-NYSE-95-47]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc., Relating to the Exclusion of Certain Orders From Trading at No Charge

December 29, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 29, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 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 Exchange proposes that, effective January 2, 1996, certain orders be excluded from the specified system orders between 100 and 2,099 shares that are eligible to be traded at no charge as set forth in companion filing (SR-NYSE-95-46).² The ineligible orders to be excluded are those with the following descriptions:

An order of a member or member organization trading as agent for the account of a non-member competing market maker. Competing Market Maker: a specialist or market maker registered as such on a registered stock exchange (other than the NYSE), or a market maker bidding and offering over-the-counter, in a New York Stock Exchange-traded security.

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 this filing is to seek approval to exclude specific orders defined in Item I. above from those eligible system orders to be traded at no charge.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(4) that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees, and

other charges among its members, issuers and other persons using its services.

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

The Exchange believes that this proposed fee change will not impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act. The proposed fee change is structured to maintain the current relationship between member proprietary and non-member market maker activities in Exchange-listed securities. In this regard, the Exchange is not seeking to give additional encouragement to members to send to the Exchange proprietary orders of competing market makers, which the Exchange believes would inappropriately promote the direct competitive activities of non-member market makers.

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

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.³

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 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.

³ The Commission notes that the equity transaction charge of \$0.00190 that this filing would impose upon competing market maker system share volume on orders between 100 to 2099 shares was first introduced by the NYSE pursuant to File No. SR-NYSE-95-38, which was noticed for comment in Securities Exchange Act Release No. 36465 (November 8, 1995) 60 FR 57473. The Commission received three comment letters in connection with that filing. These letters are available in File No. SR-NYSE-95-38.

¹³ See *supra* note 11.

¹⁴ *Id.*

¹⁵ 15 U.S.C. § 78s(b)(2) (1988).

¹⁶ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 36659 (December 29, 1995). The Commission notes that pursuant to File No. SR-95-46, the NYSE revised its equity transaction charges, effective January 2, 1996, to eliminate the exclusion currently in place that precludes orders for competing market makers from the no charge provision for system orders between 100 to 2099 shares. This revision had the effect of removing all NYSE equity transaction charges on competing market maker system orders between 100 to 2099 shares. If approved, the NYSE's current filing (SR-NYSE-95-47) would reimpose a charge of \$0.00190 on such share volume, retroactive to January 2, 1996.