

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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 35 days of the 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. 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 at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to Amendment No. 2 to File No. SR-CBOE-96-01 and should be submitted by August 27, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-19938 Filed 8-5-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37502; File No. SR-NASD-96-22]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Accelerated Temporary Approval of Proposed Rule Change To Extend Certain SOES Rules Through January 31, 1997

July 30, 1996.

I. Introduction

On June 10, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder.² The NASD proposes to extend through January 31, 1997 certain changes to The Nasdaq Stock Market, Inc.'s ("Nasdaq") Small Order Execution System ("SOES") that were originally implemented in January 1994 for a one-year pilot period ("January 1994 Amended SOES Rules").³ These rules subsequently were modified in January 1995 ("January 1995 Amended SOES Rules"),⁴ further modified in March 1995 ("March 1995 Amended SOES Rules"),⁵ extended in September

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 33377 (Dec. 23, 1993), 58 FR 69419 (Dec. 30, 1993) (approving the Amended SOES Rules on a one-year pilot basis effective January 7, 1994). See also Securities Exchange Act Release No. 33424 (Jan. 5, 1994) (order denying stay and granting interim stay through January 25, 1994) and Securities Exchange Act Release No. 33635 (Feb. 17, 1994) (order denying renewed application for stay).

The changes contained in the January 1994 Amended SOES Rules were as follows:

(1) A reduction in the maximum size order eligible for SOES execution from 1,000 shares to 500 shares;

(2) A reduction in the minimum exposure limit for "unpreferred" SOES orders from five times the maximum order size to two times the maximum order size, and the elimination of exposure limits for "preferred" orders ("SOES Minimum Exposure Limit Rule");

(3) An automated function for updating market maker quotations when the market maker's exposure limit has been exhausted (market makers using this update function may establish an exposure limit equal to the maximum order size for that security) ("SOES Automated Quotation Update Feature"); and

(4) The prohibition of short sale transactions through SOES.

⁴ Securities Exchange Act Release No. 35275 (Jan. 25, 1995) 60 FR 6327 (Feb. 1, 1995).

The January 1995 Amended SOES Rules excluded the feature of the January 1994 Amended SOES Rules relating to the prohibition of short sale transactions through SOES.

⁵ Securities Exchange Act Release No. 35535 (Mar. 27, 1995), 60 FR 16690 (Mar. 31, 1995).

1995 ("September 1995 Amended SOES Rules"),⁶ and further extended in January 1996 ("January 1996 Amended SOES Rules").⁷ The January 1996 Amended SOES Rules are scheduled to expire on July 31, 1996, and the NASD seeks to extend these rules until January 31, 1997. Without further Commission action, the SOES rules would revert to those in effect prior to January 1994.

Notice of the proposed rule change appeared in the Federal Register on July 5, 1996.⁸ No comments were received in response to the Commission release. For the reasons discussed below, this order approves the proposed rule change until January 31, 1997.

II. Description of the Current and Prior Proposals

The NASD proposed to extend until January 31, 1997 the January 1996 Amended SOES Rules. Specifically, the NASD proposes to extend until January 31, 1997 the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature.

III. Discussion

The Commission must approve a proposed NASD rule change if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that govern the NASD.⁹ In evaluating a given proposal, the Commission examines the record before it and relevant factors and information.¹⁰ The Commission believes

The March 1995 Amended SOES Rules excluded the following two features of the January 1994 Amended SOES Rules:

(1) A reduction in the maximum size order eligible for SOES execution from 1,000 shares to 500 shares; and

(2) The prohibition of short sales transactions through SOES. (This prohibition also was excluded from the January 1995 Amended SOES Rules.) See *supra*, note 4.

⁶ Securities Exchange Act Release No. 36311 (September 29, 1995), 60 FR 52438 (October 6, 1995). The September 1995 Amended SOES Rules were identical to the March 1995 Amended SOES Rules, and extended the effectiveness of such rules until January 31, 1996.

⁷ Securities Exchange Act Release No. 36795 (January 31, 1996), 61 FR 4504 (February 6, 1996). The January 1996 Amended SOES Rules were identical to the September 1995 and March 1995 Amended SOES Rules, and extended the effectiveness of such rules until July 31, 1996.

⁸ Securities Exchange Act Release No. 37377 (June 27, 1996), 61 FR 35284 (July 5, 1996).

⁹ 15 U.S.C. § 78s(b). The Commission's statutory role is limited to evaluating the rules as proposed against the statutory standards. See S. Rep. No. 75, 94th Cong., 1st Sess. 13 (1975).

¹⁰ In the Securities Acts Amendments of 1975, Congress directed the Commission to use its authority under the Act, including its authority to approve SRO rule changes, to foster the establishment of a national market system and promote the goals of economically efficient securities transactions, fair competition, and best

Continued

⁵ 17 CFR 200.30-3(a)(12).

that approval of the proposal through January 31, 1997 meets the above standards. Specifically, the Commission believes that the current minimum exposure limit and automated quotation update feature are appropriate while the Commission considers NAqcess, the NASD's latest proposal for handling small orders from retail customers.¹¹

The Commission believes that a sufficient basis exists for approving the NASD's proposal to continue the current operation of SOES.¹² The system provided and continues to provide retail investors, through automation, an enhanced opportunity to obtain execution of orders in size up to 1,000 shares and, accordingly, has improved access to the Nasdaq market.

In addition, as a result of the March 1995 Amended SOES Rules, the SOES minimum exposure limit was increased from 1,000 shares to 2,000 shares. Moreover, the March 1995 Amended SOES Rules continued the methodology for calculating a market maker's outstanding exposure limit that excluded orders executed pursuant to a preferencing arrangement. Under the SOES Rules prior to the January 1994 Amended SOES Rules, both preferred and unpreferred orders were considered when calculating a market maker's remaining exposure limit. Thus, in relative terms, the 2,000 share exposure limit potentially provides greater liquidity under certain conditions¹³ compared to the pre-January 1994 Amended SOES Rules' 5,000 share minimum exposure limit.

The Commission continues to believe that the current operation of SOES has

execution. Congress granted the Commission "broad, discretionary powers" and "maximum flexibility" to develop a national market system and to carry out these objectives. Furthermore, Congress gave the Commission "the power to classify markets, firms, and securities in any manner it deems necessary or appropriate in the public interest or for the protection of investors and to facilitate the development of subsystems within the national market system." S. Rep. No. 75, 94th Cong., 1st Sess. 7 (1975).

¹¹ See Securities Exchange Act Release Nos. 36548 (December 1, 1995), 60 FR 63092 (December 8, 1995); and 37302 (June 11, 1996) 61 FR 3154 (June 20, 1996). The comment period for the NAqcess proposal, as amended, closed on July 26, 1996, and to date the Commission has received approximately 600 comments on the proposal. The Commission's evaluation of the NAqcess proposal may affect its evaluation of any future submissions relating to SOES.

¹² In reaching this conclusion, the Commission does not rely on the data or economic analysis submitted by the NASD. See Securities Exchange Act Release Nos. 35275 (Jan. 25, 1995), 60 FR 6327 (Feb. 1, 1995); 35535 (March 27, 1995), 60 FR 16690 (March 31, 1995); 36311 (September 29, 1995), 60 FR 52438 (October 6, 1995); and 36795 (January 31, 1996) 61 FR 4504 (February 6, 1996).

¹³ That is, depending upon the mix of preferred and unpreferred orders.

eliminated economically significant restrictions imposed on order entry firms by the January 1994 Amended SOES Rules. The Commission believes that while the proposal does not restore the pre-January 1994 Amended SOES Rules' minimum exposure limit, it provides customers fair access to the Nasdaq market and reasonable assurance of timely executions. In this regard, the maximum order size is consistent with the Firm Quote Rule¹⁴ and the size requirement prescribed under the NASD rules governing the character of market maker quotations.¹⁵ Moreover, a market maker's minimum exposure limit for unpreferred orders is double its minimum size requirement prescribed under these rules.

The Commission also believes that extending the automated update function is consistent with the Act and, in particular, the Firm Quote Rule.¹⁶ The update function provides market makers the opportunity to update their quotations automatically after executions through SOES; under the Commission's Firm Quote Rule, market makers are entitled to update their quotations following an execution and prior to accepting a second order at their published quotes.¹⁷

IV. Conclusion

As indicated above, the Commission has determined to approve the extension of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature through January 31, 1997. In light of the balance of factors described above, the Commission believes extension of the reduction in the minimum exposure limit, the limitation of the exposure limit to unpreferred orders, and the provision for an automatic quotation update feature are consistent with the Act.

The Commission, in the exercise of the authority delegated to it by

¹⁴ 17 CFR 240.11Ac1-1(c).

¹⁵ *NASD Manual*, Schedules to the By-Laws, Schedule D, Part V, Sec. 2(a), (CCH) ¶ 1819.

¹⁶ The SOES automated update function is also consistent with the NASD's autoquote policy which generally prohibits autoquote systems, but allows automatic updating of quotations "when the update is in response to an execution in the security by that firm." *NASD Manual*, Schedules to the By-Laws, Schedule D, Part V, Sec. 2 (CCH) ¶ 1819.

¹⁷ The Firm Quote Rule requires market makers to execute orders at prices at least as favorable as their quoted prices. 17 CFR 11Ac1-1(c)(2). The Rule also allows market makers a reasonable period of time to update their quotations following an execution; allows market makers to reject an order if they have communicated a quotation update to their exchange or association; and provides for a size limitation on liability at a given quote. 17 CFR 240.11Ac1-1(c)(3)(ii). See also, Securities Exchange Act Release No. 14415 (Jan. 26, 1978), 43 FR 4342 (Feb. 1, 1978).

Congress, and in light of its experience regulating securities markets and market participants, has determined that approval of these changes to the SOES Rules until January 31, 1997 is consistent with maintaining investor protection and fair and orderly markets, and that these goals, on balance, outweigh possible anti-competitive effects on order entry firms and their customers.

Accordingly, the Commission finds that the rule change is consistent with the Act and the rules and regulations thereunder applicable to the NASD and, in particular, Sections 15A(b)(6), 15A(b)(9), and 15A(b)(11).

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the Federal Register. In addition to the reasons discussed in this order, the Commission believes that accelerated approval of the NASD's proposal is appropriate given the fact that the proposal is an extension of the amended SOES Rules that have been in effect since March 1995; that the information presently before the Commission leads to the conclusion that the current minimum exposure limit and automated quotation update function are appropriate features for SOES while the Commission considers the NASD's NAqcess proposal; and that without Commission action on or before July 31, 1996, the SOES rules would revert to those in effect prior to January 1994, resulting in a temporary lapse in continuity.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the instant rule change SR-NASD-96-22 be, and hereby is, approved, effective August 1, 1996 through January 31, 1997.

By the Commission,
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 96-19902 Filed 8-5-96; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-37499; File No. SR-NYSE-96-20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Retroactive Reduction of the Odd-Lot Equity Transaction Charges and the Specialist Odd-Lot Charge

July 30, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934