Agreement with a series of its first mortgage bonds to be held by the Trustee as collateral (''Collateral Bonds''). The aggregate principal amount of the Collateral Bonds would be equal to the principal amount of the Revenue Bonds or to the principal amount plus interest payments thereon for a specified period.

Gulf also could cause an irrevocable letter of credit (''Letter of Credit'') to be delivered to the Trustee and/or have an insurance company issue a policy (''Policy'') to guarantee payment of the Revenue Bonds. Gulf may also provide to the County a subordinated security interest in the Project or other property of Gulf. In the event that Gulf is unable or determines not to issue the Collateral Bonds or provide for the Letter of Credit or the Policy, Gulf could guarantee payment of the principal or premium and interest on the Revenue Bonds.

With respect to the $400 million in Bonds and Stock, the Bonds would be issued pursuant to the Mortgage and sold for the best price obtainable but for a price to Gulf of not less than 98% nor more than 101 3/4% of the principal amount thereof, plus accrued interest, which could be an adjustable interest rate determined on a periodic basis or a fixed interest rate.

Gulf could enhance the marketability of the Bonds through an insurance policy to guarantee the payment when due of the Bonds. The Bonds and/or the Stock could be subject to a mandatory or optional cash sinking fund. With respect to the issuance of the Bonds and the Stock, Gulf requests Commission authorization for a deviation from the provisions of the Commission's Statement of Policy on First Mortgage Bonds and Preferred Stock.[1]

Gulf proposes to use the proceeds from the sale of the Bonds and the Stock to redeem or retire outstanding first mortgage bonds, pollution control bonds and/or preferred stock, or along with other funds, to pay a portion of its cash requirements to conduct its electric utility business.

GPU International, Inc., et al. (70–8971)

GPU International, Inc. (''GPU International''), formerly Energy Initiatives, Inc., and GPU Electric, Inc. (''GPU Electric''), formerly EI Energy, Inc., both non-utility subsidiaries of GPU, Inc. (''GPU''), a registered holding company, and both located at One Upper Pond Road, Parsippany, New Jersey 07054, have filed a declaration with the Commission pursuant to section 12(c) of the Act and rules 46 and 54 thereunder.

By orders of the Commission dated January 19, 1996 (HCAR No. 26457) and July 6, 1995 (HCAR No. 26326), GPU was authorized to acquire GPU Electric for the purpose of acquiring one or more exempt wholesale generators (''EWGs'') and/or foreign utility companies (''FUCOs'') (collectively ''Exempt Entities'').

Bt order of the Commission dated November 16, 1995 (HCAR No. 26409), June 14, 1995 (HCAR No. 26307), September 12, 1994 (HCAR No. 26205), December 18, 1994 (HCAR No. 25715 and June 26, 1990 (HCAR No. 26409), GPU International was authorized to (i) engage in preliminary project development activities in connection with its investments in qualifying facilities as defined in the Public Utility Regulatory Policies Act of 1978, as amended, and Exempt Entities, and (ii) acquire the securities of Exempt Entities.

GPU International and GPU Electric propose that they be authorized to declare and pay dividends to GPU out of capital and unearned surplus from time to time through December 31, 2001. They state that all dividends would be declared and paid only in compliance with applicable law of their respective jurisdictions of organization and loan covenants.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1820 Filed 1–24–97; 8:45 am]

BILLING CODE 8010–01–M

[1] Holding Co. Act Release No. 13105 (Feb. 16, 1969), amended, Holding Co. Act Release No. 16369 (May 8, 1969); Holding Co. Act Release No. 13105 (Feb. 16, 1969), amended, Holding Co. Act Release No. 16758 (June 22, 1970).

[Release No. 34–38182; File No. SR–BSE–96–13]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Its Specialist Performance Evaluation Program

January 17, 1997.

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 January 6, 1997,[3] the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

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

The BSE seeks a twelve-month extension of its Specialist Performance Evaluation Program (''SPEP'').[4]

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 change is to request an extension of the Exchange's SPEP pilot program. The evaluation program, using the BEACON

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On January 6 and January 10, 1997, the BSE filed Amendment Nos. 1 and 2, respectively, with the Commission, the substance of which have been incorporated into this notice.

[4] The Commission initially approved the BSE's SPEP pilot program in Securities Exchange Act Release No. 22993 (March 10, 1986), 51 FR 8298 (March 14, 1986) (File No. SR–BSE–84–04). The Commission subsequently extended the pilot program in Securities Exchange Act Release Nos. 26162 (October 6, 1988), 53 FR 40301 (October 14, 1988) (File No. SR–BSE–87–06); 27656 (January 30, 1990), 55 FR 4296 (February 7, 1990) (File No. SR–BSE–90–01); 28919 (February 26, 1991), 56 FR 9990 (March 8, 1991) (File No. SR–BSE–91–01); and 30401 (February 24, 1992), 57 FR 7413 (March 2, 1992) (File No. SR–BSE–92–01). The BSE was permitted to incorporate objective measures of specialist performance into its pilot program in Securities Exchange Act Release No. 31890 (February 19, 1993), 58 FR 11647 (February 26, 1993) (File No. SR–BSE–92–04) (''February 1993 Approval Order''), at which point the initial pilot program ceased to exit as a separate program. The current pilot program was subsequently extended in Securities Exchange Act Release Nos. 33341, (December 15, 1993) 58 FR 67875 (December 22, 1993) (''December 1993 Approval Order''); 35187 (December 30, 1994), 60 FR 2406 (January 9, 1995); and 36668 (January 2, 1996), 61 FR 672 (January 9, 1996) (January 1996 Approval Order) (Pilot extended until December 31, 1996).

system,[5] looks at all incoming orders routed to a specialist for execution. A record of all action on these orders is accumulated in a separate file from which four calculations are run.

Section criteria for eligible orders include regular buy and sell market and marketable limit orders only. Orders marked buy minus or sell plus are excluded, as are crosses and all orders with qualifiers (*e.q.*, market-on-close, stop, stop limit, all or none, etc.). The order entry date must equal the order execution date.

For each of the measures, including the Specialist Performance Evaluation Questionnaire (''SPEQ''), a ten point scale will be applied to a range of scores. Based on the raw score for each measure, the respective specialist will receive an associated score between one and ten points, which will be weighted as indicated for each measure.

The first measure is Turnaround Time, which calculates the average number of seconds for all eligible orders based on the number of seconds between the receipt of a guaranteed market or marketable limit order in BEACON (*i.e.*, for 1299 shares or less) and the execution, partial execution, stopping or cancellation of the order. An order that is moved from the auto-ex screen to the manual screen will accumulate time until executed, partially executed, stopped or cancelled. This calculation will not be in effect until the individual stock has opened on the primary market. Certain situations, such as trading halts and periods where the BEACON system is off auto-ex floorwide, will result in blocks of time being excluded from the calculation. A specialist who averaged a raw score of twenty-five (25) seconds will receive seven points because it falls in the twenty-one (21) to twenty-five (25) second range. This calculation will comprise 20% of the overall evaluation program.

TURNAROUND TIME

Time in seconds	Points
1–10	10
11–15	9
16–20	8
21–25	7
26–30	6
31–35	5
36–40	4
41–45	3
46–50	2
51 and up	1

The second measure is Holding Orders Without Action, which measures the number of market and marketable limit orders (all sizes included)[6] that are held without action for greater than twenty-five (25) seconds. As in the Turnaround Time calculation, a stop, cancellation, execution or partial execution stops the clock. The same exclusions which apply in the Turnaround Time calculation also apply here.[7] Thus, if a specialist receives a total of 100 market and marketable limit orders and holds ten of them for more than twenty-five seconds, his or her raw score of 10% would receive nine points as it falls in the six to ten percent range. This calculation will comprise 5% of the overall evaluation program.

HOLDING ORDERS WITHOUT ACTION

Percentage of orders	Points
0–5	10
6–10	9
11–15	8
16–20	7
21–25	6
26–30	5
31–35	4
36–40	3
41–45	2
46 and up	1

This third measure is Trading Between the Quote, which measures the number of market and marketable limit orders that are executed between the best consolidated bid and offer where the spread is greater than ⅛th. Thus, if a specialist receives ten market and marketable limit orders where the spread between the best consolidated bid and offer is greater than ⅛th, and such specialist executes five of the orders between the bid and offer, his or her raw score would be 50% and would receive nine points as it falls in the 46 to 50 percent range. This calculation will comprise 35% of the overall evaluation program.

TRADING BETWEEN THE QUOTE

Percentage of orders	Points
51 and up	10
46–50	9
41–45	8
36–40	7
31–35	6
26–30	5
21–25	4
16–20	3
11–15	2
0–10	1

The fourth measure is Executions in Size Greater than BBO, which measures the number of market and marketable limit orders which exceed the BBO size and are executed in a size larger than the BBO size. Thus, if a specialist receives a total of ten market and marketable limit orders which exceed the BBO size and executes nine of the orders in sizes larger than the BBO size, his or her raw score would be 90% and would receive eight points as it falls in the 86 to 90 percent range. This calculation will comprise 35% of the overall evaluation program.

EXECUTIONS IN SIZE GREATER THAN BBO

Percentage of orders	Points
96–100	10
91–95	9
86–90	8
81–85	7
76–80	6
71–75	5
66–70	4
61–65	3
56–50	2
55 and below	1

The fifth measure is the SPEQ.[8] The minimum acceptable raw score for each question is 4.5. Thus, if a specialist receives a raw score of 4.5 for each question for a weighted raw score (based on the weights for each question within the questionnaire) of 50.0052, he or she would receive four points as it falls in the 50 to 54 weighted score range. The questionnaire will comprise 5% of the overall evaluation program.

QUESTIONNAIRE

Weighted raw score	Points
83 and above	10
77–82	9
72–76	8
66–71	7

[5] BEACON is the BSE's automated order-routing and execution system. BEACON provides a guarantee of execution for market and marketable limit orders up to and including 1,299 shares. In addition, BEACON can be used to transmit orders not subject to automatic execution. *See* BSE Rules, Ch. XXXIII, §§ 2654–55.

[6] Unlike Turnaround Time, Holding Orders Without Action is not limited to those orders guaranteed automatic execution through BEACON.

[7] The Holding Orders Without Action calculation will not be in effect until the individual stock has opened on the primary market. In addition, certain situations, such as trading halts and periods where the BEACON system is off auto-ex floorwide, will result in blocks of time being excluded from the Holding Orders Without Action calculation. *See* December 1993 Approval Order.

[8] Several changes were made to the SPEQ in view of the adoption of the objective measures which have made some questions obsolete. *See* the January 1996 Approval Order.

QUESTIONNAIRE—Continued

Weighted raw score	Points
61–65	6
55–60	5
50–54	4
44–49	3
38–43	2
37 and below	1

Using the examples from each measure above, the following weighted point totals would result in an overall program score of 8.0:

Measure	Points	Weighted points
Turnaround Time (20%)	7	1.40
Holding Orders Without Action (5%)	9	0.45
Trading Between the Quote (35%)	9	3.15
Executions in Size ≤ BBO (35%)	8	2.80
Questionnaire (5%)	4	0.20
	....	8.00

Any specialist who is deficient[9] in any one of the objective measures for any review period will be required to appear before the Performance Improvement Action Committee (''PIAC'') to discuss ways of improving performance. If performance does not improve in the subsequent period, the specialist will appear before the Market Performance Committee (''MPC'') for appropriate action, as described below.[10]

Any specialist who falls below the threshold level for the overall evaluation program for any review period will be required to appear before the MPC, which will take action to address the deficient performance as provided for in the Supplemental Material to the SPEP.[11] A specialist who is ranked in the bottom 10% of the overall evaluation program but who is above the threshold level for the overall program will be subject to staff review to determine if there is sufficient reason to warrant informing the PIAC of potential performance problems.

The following threshold scores have been set at which a specialist will be deemed to have adequately performed:[12]

Overall Evaluation Score—at or above weighted score of 6.70
Turnaround Time—below 21.0 seconds (8 points)
Holding Orders Without Action—below 21.0% (7 points)
Trading Between the Quote—at or above 31.0% (6 points)
Executions in Size > BBO—at or above 81.0% (7 points)
Questionnaire—at or above weighted score of 50.0 (4 points)

Due to the subjectiveness of the questionnaire, a specialist who is deficient on the questionnaire alone will be subject to review by Exchange staff to determine if there is sufficient reason to warrant informing the PIAC of potential performance problems. However, a deficient score on the questionnaire may result in a performance improvement action when it lowers the overall program score below 6.70.

The Exchange requests an extension of the current pilot program through December 31, 1997. This approximate twelve-month period will enable the Exchange to further evaluate the appropriateness of the measures and their respective weights, as well as the effectiveness of the overall evaluation program.

2. Statutory Basis

Section 6(b)(5) of the Act[13] is the basis of the proposed rule change in that the SPEP results weigh heavily in stock allocation decisions and, as a result, specialists are encouraged to improve their market quality and administrative duties, thereby promoting just and equitable principles of trade and aiding in the perfection of a free and open market and a national market system.

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.

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

No written comments were either solicited or received.

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 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 provision of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–96–13 and should be submitted by February 18, 1997.

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

The Commission believes that specialists play a crucial role in providing stability, liquidity, and continuity to the trading of stocks. Among the obligations imposed upon specialists by the Exchange, and by the Act and the rules promulgated thereunder, is the maintenance of fair and orderly markets in their designated securities.[14] To ensure that specialists fulfill these obligations, it is important that the Exchange conduct effective oversight of their performance. The BSE's SPEP is critical to this oversight.

In its 1993 order approving the incorporation of objective measures of performance,[15] the Commission asked the Exchange to monitor the effectiveness of the amended SPEP. Specifically, the Commission requested information about the number of specialists who fell below acceptable levels of performance for each objective measure, the questionnaire and the overall program; and about the specific measures in which each such specialist was deficient. The Commission also requested information about the number of specialists who, as a result of each condition for review, were referred to the PIAC and/or the MPC; and about the type of action taken with respect to each such deficient specialist. In September

[9] A specialist is deficient in any measure if he or she scores below the minimum adequate performance thresholds set forth below. *See infra* text accompanying note 10.

[10] The SEC notes that, in the event a specialist's performance does not improve, the Supplemental Material to the SPEP authorizes the MPC to take the following actions: suspending the specialist's trading account privilege, suspending his or her alternate specialist account privilege, or reallocating his or her specialty stocks. *See* BSE Rules, Ch. XV, ¶ 2156.10–2156.60.

[11] *See supra* note 8.

[12] A specialist who receives a score that is below a minimum adequate performance threshold will be deemed to be deficient in that measure. *See supra* note 7.

[13] 15 U.S.C. 78f(b)(5).

[14] Rule 11b–1, 17 CFR 240.11b–1; BSE Rules Ch. XV, ¶ 2155.01.

[15] For a description of the Commission's rationale for approving the incorporation of objective measures of performance into the BSE's SPEP on a pilot basis, see February 1993 Approval Order, *supra* note 3. The discussion in the aforementioned order is incorporated by reference into this order.

1993, October 1994, December 1995 and January 1997, the BSE submitted to the Commission monitoring reports regarding its amended SPEP. The reports describe the BSE's experience with the pilot program during 1993, 1994, 1994 and the first two periods of 1996.

In its January 1996 Approval Order extending the pilot program, the Commission set forth concerns with the pilot program. The Commission reviewed the BSE's experience with its minimum adequate performance thresholds and noted that the acceptable levels of performance had not been revised since the beginning of the pilot and should be reviewed. The Commission also stated that taking the SPEP as a whole, most potential performance problems needed to be brought to the attention of the appropriate committee and that the BSE should examine its SPEP to ensure that adequate corrective actions are taken with respect to each deficient specialist. The BSE addressed these concerns and certain changes to the SPEP were approved by the Commission, as discussed in more detail below. However, the Commission believes that the Exchange should continue to monitor these concerns.

In terms of the overall scope of the SPEP, the Commission continues to believe that objective measures, together with a floor broker questionnaire, should generate sufficiently detailed information to enable the Exchange to make accurate assessments of specialist performance. In this regard, the objective criteria have been useful in identifying how well specialist carry out certain aspects (*i.e.*, timeliness of execution, price improvement and market depth) of their responsibilities as specialists. In conclusion, although the Commission believes the BSE should evaluate means to strengthen its performance oversight program, the pilot has been a positive first step towards developing a more effective SPEP. Accordingly, the Commission believes that it is appropriate to extend the pilot program for an approximate twelve-month period, expiring December 31, 1997.

This period will allow the Exchange to respond to the Commission's continuing concerns about the SPEP. First, the Commission expects the BSE to continue to evaluate the incorporation of additional objective criteria,[16] so that the Exchange can conduct a thorough analysis of specialist performance.[17] At the same time, the BSE should continue to assess whether each measure, as well as the questionnaire, is assigned an appropriate weight.[18] In addition, the Commission expects the Exchange to continue to conduct an on-going examination of its minimum adequate performance thresholds, in order to ensure that they continue to be set at appropriate levels.[19] The Commission also continues to believe that relative performance rankings that subject the bottom 10% of all specialist units to review by an Exchange committee are an important part of an effective evaluation program. The BSE should continue to closely monitor the conditions for review and should take steps to ensure that all specialists whose performance is deficient and/or diverges widely from the best units will be subject to meaningful review. In the Commission's opinion, a meaningful review process would ensure that adequate corrective actions are taken with respect to each deficient specialist.[20] The Commission would have difficulty granting permanent approval to a SPEP that did not include a satisfactory response to the concerns described above.

The Commission therefore requests that the BSE submit a report to the Commission, by September 17, 1997, describing its experience with the pilot. At a minimum, this report should contain data, for the last review period of 1996 and the first two review periods of 1997, on (1) the number of specialists who fell below acceptable levels of performance for each objective measure,[21] the questionnaire and the overall program, and the specific measures in which each such specialist was deficient; (2) the number of specialists who, as a result of the objective measures, appeared before the PIAC for informal counseling; (3) the number of such specialists then referred to the MPC and the type of action taken; (4) the number of specialists who, as a result of the overall program, appeared before the MPC and the type of action taken; (5) the number of specialists who, as a result of the questionnaire or falling in the bottom 10% were referred by the Exchange staff to the PIAC and the type of action taken (this should include the number of specialists then referred to the MPC and the type of action taken by that Committee); and (6) a list of stocks reallocated due to substandard performance and the particular unit involved. The report also should discuss the specific action taken by the BSE to develop additional objective measures and address the other concerns noted above. Any requests to modify this pilot, to extend its effectiveness or to seek permanent approval for the SPEP should be submitted to the Commission by September 17, 1997, as a proposed rule change pursuant to Section 19(b) of the Act.

For the reasons discussed above, the Commission finds that the BSE's proposal to extend its SPEP pilot program until December 31, 1997 is consistent with the requirements of Sections 6 and 11 of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with the Section 6(b)(5)[22] requirement that the rules of the

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[16] The Commission notes that in a previous rule change proposal, the Exchange stated it was currently engaged in an effort to develop other measures of performance for inclusion in the SPEP and hoped to file for modification to the program in the near future. *See* Securities Exchange Act Release No. 37581 (August 19, 1996), 61 FR 43797 (August 26, 1996) (August 1996 Release). No new objective performance measures have been added at this time.

[17] For example, the BSE could develop additional measures of market depth, such as how often the specialist's quote exceeds 500 shares or how often the BSE quote, in size, is larger than the BBO (excluding quotes for 100 shares). Another possible objective criteria could measure quote performance (*i.e.*, how often the BSE specialist's quote, in price, is alone at or tied with the BBO).

[18] The Commission had recommended in its January 1996 Approval Order that the BSE consider either having only one measure out of the Turnaround Time and Holding Orders Without Action categories or reducing the weights of the existing measures, which together accounted for 30% of the current SPEP, because of the substantial overlap between those two measures. In response to this recommendation, the BSE did reduce the weights of these two measures to 25% of the overall program. In addition, the decrease in these two categories, as well as a decrease in the weight of the SPEQ to 5%, enabled the Exchange to increase the weight of each of the other objective criteria from 25% to 35%. *See* August 1996 Release.

[19] In response to this recommendation, which was also included in the January 1996 Approval Order, the BSE revised some of the minimum adequate performance levels. The revised levels provide a higher benchmark for acceptable specialist performance on the Exchange, which in turn benefits the execution of public orders on the BSE and further the protection of investors. *See* August 1996 Release.

[20] In response to these comments, the BSE revised its review process by tightening the standards for committee review for substandard specialist performance both in the overall program and in individual measures. The criteria for PIAC review for substandard performance in any one objective measure was reduced from two out of three consecutive review periods to any one review period. The criteria for MPC review of substandard performance in any one objective measure was reduced from three out of four consecutive review periods to two out of three consecutive review periods, while MPC review for substandard overall performance was reduced from two out of three consecutive review periods to any one review period. *See* August 1996 Release.

[21] For each objective measure, the Commission also requests that the BSE provide the mean and median scores.

[22] 15 U.S.C. 78f(b)(5).

Exchange be designed 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.

Further, the Commission finds that the proposal is consistent with Section 11(b) of the Act [23] and Rule 11b–1 thereunder [24] which allow securities exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets and to remove impediments to and perfect the mechanism of a national market system.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. This will permit the pilot program to continue and allow the BSE time to consider improvements to its program. In addition, the rule change that implemented the pilot program was published in the Federal Register for the full comment period, and no comments were received.[25] Accordingly, the Commission believes that it is consistent with the Act to accelerate approval of the proposed rule change.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [26] that the proposed rule change (File No. SR–BSE–96–13) is hereby approved on a pilot basis until December 31, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–1818 Filed 1–24–97; 8:45 am]

BILLING CODE 8010–01–M

[23] 15 U.S.C. 78k(b).

[23] 17 CFR 240.11b–1.

[25] *See* February 1993 Approval Order, *supra* note 3.

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

[Release No. 34–38185; File No. SR–NASD–97–01]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Accelerated Partial Temporary Approval of Proposed Rule Change Relating to Entry of Certain SelectNet Orders

January 21, 1997.

I. Introduction

On January 8, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder [2] a proposed rule change to clarify members' obligations regarding the use of the SelectNet Service as it will operate under the Commission's new limit order display rule, Rule 11Ac1–4 (''Display Rule'') and amendments to Rule 11Ac1–(c)(5) (''ECN Amendment''). The proposed rule change was published for comment in Securities Exchange Act Release No. 38149 (January 10, 1996), 62 FR 1942 (January 14, 1997) (''Notice of Proposed Rule Change''). This order temporarily approves the proposed rule change, in part, on an accelerated basis.

II. Description of the Proposal

The NASD has proposed a new Conduct Rule to prohibit members from cancelling or attempting to cancel a broadcast or preferenced order entered into SelectNet until a minimum period of ten seconds has elapsed, and to prohibit the entry of a preferenced order to electronic communications networks that have conditions regarding responses to the order.[3]

III. Discussion

In August 1996, the Commission adopted a new rule and amendments to an existing rule that went into effect on January 20, 1997.[4] Upon commencement of the Order Execution Rules, over-the-counter (''OTC'') market makers began representing certain customer limit orders in their quotations in manner significantly different from previously. Moreover, under an amendment to the Quote Rule, electronic communications networks (''ECNs'') began entering quotations in the Nasdaq Stock Market in a manner which heretofore was reserved for registered market makers.[5]

To facilitate the ECN Display Alternative envisioned by the Order Execution Rules, Nasdaq has established linkages with four ECNs,[6] which provide these ECNs a means to display their best market makers' and specialists' quotes and certain customer quotes in the Nasdaq system.[7] A critical portion of Nasdaq's linkage mechanism involves Nasdaq's SelectNet Service (''SelectNet''). The SelectNet linkage allows NASD members that are not subscribers to a particular ECN to access the ECN's orders that are being displayed in the Nasdaq quote montage via a preferenced order in SelectNet directed to a particular ECN at its displayed price.[8]

Each ECN is required, pursuant to an Agreement signed with Nasdaq and conditions of letters from Commission staff recognizing the ECN as a Display Alternative, to have an automated system designed to respond to a preferenced order received via SelectNet within a few seconds. Consequently, the ECN has only seconds to accept a preferenced order, send the Nasdaq processor an acknowledgement that the order has been accepted, and notify its customer of the order's execution. Although an ECN, upon accepting a preferenced order, notifies its customer of an execution obtained via SelectNet, the execution does not actually occur when the ECN accepts the order but rather when the Nasdaq system processor receives the ECN acknowledgement that it has accepted the order. During the time the Nasdaq

[1] 15 U.S.C. 78s (b)(1).

[2] 17 CFR 240.19b–4.

[3] Rule 3380 is proposed to read (a) Cancellation of a Select Net Order: No member shall cancel or attempt to cancel an order, whether preferenced to a specific market maker or electronic communications network, or broadcast to all available members, until a minimum time period of ten seconds has expired after the order to be cancelled was entered. Such ten second time period shall be measured by the Nasdaq processing system processing the SelectNet order; (b) Prohibition Regarding The Entry of Conditional Orders: No member shall enter an order into SelectNet that is preferenced to an electronic communications network covered by Rule 4623 that has any conditions regarding responses to the order, e.g., preferenced SelectNet orders sent to an electronic communications networks shall not be all or none, or subject to minimum execution size above a normal unit of trading, or deemed non-negotiable.

[4] See Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) adopting Rule 11Ac1–4 (''Limit Order Display Rule'') and amendments to Rule 11Ac1–1 (''Quote Rule'') (collectively the ''Order Execution Rules''). See also Securities Exchange Act Release Nos. 38110 (January 2, 1997), 62 FR 1279 (January 9, 1997) (revising the effective date of the Order Execution Rules to January 13, 1997); and 38139 (January 8, 1997) (revising the effective of the Order Execution Rules until January 20, 1997).

[5] Rule 11Ac1–1(c)(5) requires a market maker to display in its quote any better priced order the market maker places into an electronic communications network (''ECN Amendment''). Alternatively, the ECN Amendment provides an exception to the market maker's display obligation that depends upon the ECN itself displaying into the consolidated system the best-priced orders entered therein by a market maker or specialist, and allowing brokers and dealers to access such orders (''ECN Display Alternative'').

[6] The four ECNs are B-Trade; Instinet; Island; and Terra Nova.

[7] ECNs must provide the best prices and sizes that market makers and specialists have entered in the ECN to the public quotation system for inclusion in the consolidated quotation. See Order Execution Rules Adopting Release at 121.

[8] See Order Execution Rules Adopting Release at 121, noting that the ability of nonsubscribers to access market makers' and specialists' orders entered into an ECN is a fundamental requirement of the ECN Display Alternative.