overpay for securities. Salomon argues that it is unlikely that it would be able to exercise any adverse influence over the Trusts with respect to purchases of Treasuries because Treasuries do not vary in quality and are traded in one of the most liquid markets in the world. Treasuries are available through both primary and secondary dealers, making the Treasury market very competitive. In addition, market prices on Treasuries can be confirmed on a number of commercially available information screens. Salomon argues that because it is one of a limited number of primary dealers in Treasuries, it will be able to offer the Trusts prompt execution of their Treasury purchases at very competitive prices.

4. Salomon states that it is only seeking relief from section 17(a) with respect to the initial purchase of the Treasuries and not with respect to an ongoing course of business. Consequently, investors will know before they purchase a Trust's Securities the Treasuries that will be owned by the Trust and the amount of the cash payments that will be provided periodically by the Treasuries to the Trust and distributed to Holders. Salomon also asserts that whatever risk there is of overpricing the Treasuries will be borne by the counterparties and not by the Holders because the cost of the Treasuries will be calculated into the amount paid on the Contracts. Salomon argues that, for this reason, the counterparties will have a strong incentive to monitor the price paid for the Treasuries, because any overpayment could result in a reduction in the amount that they would be paid on the Contracts.

5. Salomon believes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person, that the proposed transaction is consistent with the policy of each of the Trusts, and that the requested exemption is appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policies and provisions of the Act.

Applicant's Condition

Salomon agrees that the order granting the requested relief will be subject to the following conditions:

1. Any investment company owning voting stock of any Trust in excess of the limits imposed by section 12(d)(1) of the Act will be required by the Trust's charter documents to vote its Trust shares in proportion to the vote of all other Holders.

2. The trustees of each Trust, including a majority of the trustees who are not interested persons of the Trust, (i) will adopt procedures that are reasonably designed to provide that the conditions set forth below have been complied with; (ii) will make and approve such changes as deemed necessary; and (iii) will determine that the transactions made pursuant to the order were effected in compliance with such procedures.

3. The Trusts (i) will maintain and preserve in an easily accessible place a written copy of the procedures (and any modifications to such procedures), and (ii) will maintain and preserve for the longer of (a) the life of the Trusts and (b) six years following the purchase of any Treasuries, the first two years in an easily accessible place, a written record of all Treasuries purchased, whether or not from Salomon, setting forth a description of the Treasuries purchased, the identity of the seller, the terms of the purchase, and the information or materials upon which the determinations described below were made.

4. The Treasuries to be purchased by each Trust will be sufficient to provide payments to Holders of Securities that are consistent with the investment objectives and policies of the Trust as recited in the Trust's registration statement and will be consistent with the interests of the Trusts and the Holders of its Securities.

5. The terms of the transactions will be reasonable and fair to the Holders of the Securities issued by each Trust and will not involve overreaching of the Trust or the Holders of Securities of the Trust on the part of any person concerned.

6. The fee, spread, or other remuneration to be received by Salomon will be reasonable and fair compared to the fee, spread, or other remuneration received by dealers in connection with comparable transactions at such time, and will comply with section 17(e)(2)(C) of the Act.

7. Before any Treasuries are purchased by the Trust, the Trust must obtain such available market information as it deems necessary to determine that the price to be paid for, and the terms of, the transaction is at least as favorable as that available from other sources. This will include the Trust obtaining and documenting the competitive indications with respect to the specific proposed transaction from two other independent government securities dealers. Competitive quotation information must include price and settlement terms. These dealers must be those who, in the experience of the Trust's trustees, have demonstrated the consistent ability to provide professional execution of Treasury transactions at competitive market prices. They also must be those who are in a position to quote favorable prices.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–26399 Filed 10–3–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39139; File No. SR–NASD–97–59]

Self-Regulatory Organizations; Order Granting Temporary Approval on an Accelerated Basis of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Short Sale Rule

September 26, 1997.

On August 14, 1997, the national Association of Securities Dealers, Inc. (''NASD'') or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder to amend Rule IM–3350 to provide that a ''legal'' short sale must be effected at a price equal to or greater than the offer price when the inside spread is less than 1⁄16th. Notice of the proposed rule change, together with the substance of the proposal, was published in the **Federal Register**.[3] No comments on the proposed rule change have been received, to date. This order grants temporary approval on an accelerated basis to the proposed rule change through January 15, 1998. At the expiration of rule, the Commission will consider permanent approval of the proposed rule change in unison with the Commission's consideration of the permanent approval of the NASD's short sale rule.[4]

[1] 15 U.S.C. 78s(b)(1) (1994).

[2] 17 CFR 240.19b–4 (1997).

[3] Securities Exchange Act Release No. 38975 (August 26, 1997), 62 FR 46535 (September 3, 1997) [File No. SR–NASD–97–59].

[4] *See also* companion release Securities Exchange Act Release No. 39140. The short sale rule was originally adopted in June of 1994 for Nasdaq National Market securities on a pilot basis with a termination date of March 5, 1996. Securities Exchange Act Release No.34277 (June 29, 1994), 59 FR 34885 (July 7, 1994) [File No. SR–NASD–92–12]. The pilot was subsequently extended through

Continued

I. Background

The NASD's short sale rule prohibits member firms from effecting short sales [5] at or below the current inside bid as disseminated by Nasdaq whenever that bid is lower than the previous inside bid.[6] The rule currently provides that a short sale is a ''legal'' short sale in a ''down'' bid situation if it is effected at a price at least 1⁄16th above the inside bid (''Minimum Increment Rule''). The Minimum Increment Rule was implemented to ensure that short sales were not effected at prices so close to the inside bid during down markets that the short sales were inconsistent with the underlying purposes of the short sale rule (*i.e.* to prohibit market destabilizing and abusive short sales in declining markets).

Now that all Nasdaq stocks can potentially trade with a 1⁄16th spread or less, due to, among other things, the new SEC Order Handling Rules, and in light of the movement toward smaller minimum quotation variations generally, consideration was given to modifying the Minimum Increment Rule for stocks with an inside spread less than 1⁄16th. Accordingly, the NASD is proposing an amendment to the Minimum Increment Rule to provide that a ''legal'' short sale must be effected at a price equal to or greater than the offer price when the inside spread is less than 1⁄16th. There would be no change to the current definition for stocks with a spread of 1⁄16th or greater. For example, if the inside market for ABCD is 10 1⁄4–10 5⁄16, a legal short sale in a down market would have to be effected at a price equal to or greater than 10 5⁄16 (*i.e.*, 1⁄16th above the current inside bid). However, if the inside market is 5 1⁄32–5 2⁄32, a legal short sale in a down market could be effected at a price equal to the inside offer of 5 2⁄32.

In addition, to help ensure that market participants do not adjust their quotations to circumvent the short sale rule, the NASD is proposing an amendment to the Minimum Increment Rule to provide that a market maker or customer could not bring about or cause the inside spread for a stock to narrow in a declining market (*e.g.*, lowering its offer to create an inside spread less than 1⁄16th) for the purpose of facilitating the execution of a short sale at a price less than 1⁄16th above the inside bid.

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

The Commission finds that temporary approval on an accelerated basis of the NASD's proposed rule change through January 15, 1998, is consistent with the Act and the rules and regulations promulgated thereunder. Specifically, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act.[7] 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, and to remove impediments to and perfect the mechanism of a free and open market. Given the Commission's temporary approval of the short sale rule, the Commission believes that the proposed rule change is a reasonable approach to preserve the short sale rule's underlying purpose and effect when the inside spread is less than 1⁄16th.

The Commission also finds good cause for approving on a temporary basis the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof. The Commission believes that it is appropriate to accelerate temporary approval of the proposed rule change through January 15, 1998, because accelerated approval will allow NASD members, without delay, to effect ''legal'' short sales consistent with the underlying purpose and effect of the NASD's short sale rule in situations where the inside spread is less than 1⁄16th, while the NASD and the Commission consider the effect of the short sale rule.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, SR–NASD–97–59 be, and hereby is, approved on a temporary basis through January 15, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–26357 Filed 10–3–97; 8:45 am]

BILLING CODE 8010–01–M

October 1, 1997. Securities Exchange Act Release No. 37917 (November 1, 1996), 61 FR 57934 (November 8, 1996) [File No. SR–NASD–96–41]; *See also* Securities Exchange Act Release No. 36171 (August 30, 1995), 60 FR 46651 (September 7, 1995) [File No. SR–NASD–95–35]; Securities Exchange Act Release No. 37492 (July 29, 1996), 61 FR 40963 (August 5, 1996) [File No. SR–NASD–96–30]; Securities Exchange Act Release No. 37917 (November 1, 1996), 61 FR 57934 (November 8, 1996) (File No. SR–NASD–96–41]. On August 8, 1997, the NASD submitted a proposed rule change (SR–NASD–97–58) to the Commission to implement the short sale rule on a permanent basis.

[5] A short sale is a sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller. To determine whether a sale is a short sale, members must adhere to the definition of a ''short sale'' contained in Securities Exchange Act Rule 3b–3, 17 CFR 240.3b–3, which rule is incorporated into Nasdaq's short sale rule as NASD Rule 3350(k)(l).

[6] Nasdaq calculates the inside bid or best bid from all market makers in the security (including bids on behalf of exchanges trading Nasdaq securities on an unlisted trading privileges basis), and disseminates symbols to denote whether the current inside bid is an ''up bid'' or a ''down bid.'' Specifically, an ''up bid'' is denoted by a green ''up'' arrow and a ''down bid'' is denoted by a red ''down'' arrow. Accordingly, absent an exemption from the rule, a member cannot effect a short sale at or below the inside bid for a security in its proprietary account or a customer's account if there is a red arrow next to the security's symbol on the screen.

[7] 15 U.S.C.§ 78*o*(b)(6) (1994).

[8] 17 CFR 200.30–3(a)(12) (1997).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39140; File No. SR–NASD–97–65]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Extending the Pilot Program of the NASD's Short Sale Rule

September 26, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 [2] thereunder, notice is hereby given that on September 4, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') 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 and to grant accelerated approval of the proposed rule change.

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

The NASD is proposing to amend Rule 3350 to extend the pilot program of the NASD's short sale rule from October 1, 1997 until January 15, 1998. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

[1] 15 U.S.C. § 78s(b)(1)(1994).

[2] 17 CFR 240.19b–4 (1997).