

In addition to Nasdaq's expanded authority to initiate operational trading halts, the proposed rule change will expand Nasdaq's authority to initiate regulatory trading halts when it learns of regulatory concerns (either through a regulatory trading halt by another market or incomplete or inaccurate disclosure from the issuer). The Commission believes that Nasdaq's expanded authority will help prevent fraudulent practices and protect investors.

IV. Conclusion

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

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act¹⁰ that the proposed rule change (SR-NASD-97-60) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-31753 Filed 12-3-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39367; File No. SR-NASD-97-53]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to Proposed Rule Change Relating to Trading in Exchange-Listed Securities in the Third Market

November 26, 1997.

I. Introduction

On July 28, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 ("Exchange Act").¹ The proposed rule change relating to automated quotations in exchange-listed securities in the third market, including Amendment No. 1, was published for comment in Securities Exchange Act Release No. 38985 (August 27, 1997).² Two comment letters were received on the proposal.³ On October 10, 1997, the NASD filed Amendment No. 2, prepared by Nasdaq, which deferred the proposal for permissible uses of automated quotations with respect to exchange-listed securities included in the Intermarket Trading System ("ITS"). For the reasons discussed below, the Commission is approving the proposed rule change and granting accelerated approval to Amendment No. 2.

II. Description of the Proposal

The NASD's proposal included changes to several rules governing the trading in exchange-listed securities in the over-the-counter market, the so-called "third market." Specifically, the NASD proposed to amend rules of the NASD to: (1) Codify permissible uses of computer-generated quote systems with respect to exchange-listed securities;⁴ (2) eliminate the excess spread rule for market makers in exchange-listed securities; (3) reduce the minimum quotation size applicable to market makers in exchange-listed securities to one unit of trading (*i.e.*, 100 shares), regardless of whether the CQS market maker⁵ is displaying a customer's limit order or quoting for its own proprietary account; (4) extend exemptive provisions of the NASD's limit order protection rule applicable to Nasdaq-listed securities (the "Manning Rule") to exchange-listed securities; and (5) reduce from 1000 to 100 the number of shares that CAES will execute automatically.

¹ 15 U.S.C. 78s(b)(1).

² 62 FR 46787 (September 4, 1997).

³ See letter from Steven Alan Bennett, Senior Vice President and General Counsel, BankOne, to Mr. Jonathan Katz, Secretary, SEC, dated September 25, 1997 ("BankOne Letter"); and letter from James E. Buck, Senior Vice President and Secretary New York Stock Exchange to Mr. Jonathan G. Katz, Secretary, SEC, dated September 29, 1997 ("NYSE Letter").

⁴ However, with the approval of Amendment No. 2 to the proposal, exchange-listed securities that are included in the ITS/Computer Assisted Execution System ("CAES") linkage are not subject to the NASD's rule regarding permissible uses of computer-generated quote systems.

⁵ Quotations and quotation sizes in reported securities may be entered into the Consolidated Quotations Service ("CQS") through The Nasdaq Stock Market only by an Association member registered with it as a CQS market maker. See NASD Rule 6320.

a. Permissibility of the Use of Certain Automated Quotation Generation Systems

The plan governing the ITS Plan currently provides that exchange specialists and CQS market makers may use "automated quotation tracking systems," provided that the quotations generated by such systems are for 100 shares or less ("100-Share Autoquoting Limitation"). Despite the ITS plan's allowance of 100-share autoquotes, the NASD currently prohibits CQS market makers from using autoquote systems to effect automated quote updates or to track the inside market. In addition, the NASD currently requires CQS market makers to maintain a minimum quotation size of 500 shares, with the exception of displaying a customer limit order, which also effectively prohibits CQS market makers from autoquoting.

The NASD's proposal explicitly accommodates computer-generated quotations that add value to the market and do not raise quotation accessibility concerns or compromise the capacity or integrity of Nasdaq. Specifically, the proposed rule change amends NASD Rule 6330 to permit computer-generated quotations in exchange-listed securities that generate proprietary quotes for 100 shares or more if such quote systems equal or improve either or both sides of the NBBO. For example, if a CQS market maker utilized a computer-generated quotation program to match the best offer (bid) and the market responsible to the best offer (bid) subsequently increased (decreased) its offer (bid) price, the CQS market maker could not use the program to track such inferior price. Thus, if the best offer is 20¹/₄, a CQS market maker could use the program to improve its offer to 20¹/₄. If the market responsible for the 20¹/₄ offer moved to 20³/₈, however, the CQS market maker could not use the program to move its offer to 20³/₈.

In addition, the proposed rule change amends Rule 6330 to permit computer-generated quotations that add size to the NBBO, or are used to expose a customer's market or marketable limit order for price improvement opportunities. These uses would be in addition to three other forms of computer-enhanced quotation maintenance programs referenced in the NASD's Autoquote Policy which are also being incorporated into Rule 6330 with respect to exchange-listed securities.⁶ With the exception of these

⁶ See NASD IM-4613. Specifically, these three forms are: (1) Quotation updates in response to an execution in the security by that firm (such as execution of an order that partially fills a market maker's quotation size); (2) quotation updates that

⁹ In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 300.30(a)(12).

types of computer-generated quotation and maintenance systems, all other types of computer-generated quotations would continue to be prohibited. Thus, market makers could not use computer-generated quotations to track away from the inside market ("autoquoting away").

b. Elimination of the Excess Spread Rule

The NASD also proposed to enhance the quotation flexibility of CQS market makers by eliminating the excess spread rule for CQS securities. The NASD determined that the potential adverse competitive consequences on highly automated CQS market making firms who are prohibited from autoquoting away could be minimized if the excess spread rule was eliminated. Specifically, by eliminating the excess spread rule for CQS securities, the NASD believes that CQS market makers will have more flexibility in quoting, Nasdaq capacity will not be needlessly consumed by processing voluminous quote updates autoquoting away from the market, and the competitiveness of the third market will not be compromised.

c. Changes to the Minimum Quote Size Rule for CQS Market Makers

In an environment where investors are able to directly impact quoted prices in the third market by having their limit orders displayed publicly, the NASD believes it is appropriate to treat CQS market makers in a manner equivalent to exchange specialists and not subject them to minimum quote size requirements. The NASD believes the increased order-driven nature of the third market brought about by the SEC's Limit Order Display Rule obviates the justification for the 500 Share Quote Rule. Accordingly, the NASD proposed to amend the 500 Share Quote Rule to permit a CQS market maker to post quotations commensurate with their own freely-determined trading interest, provided, however, that the quotations must be for at least one normal unit of trading.

d. Modifications to CAES

The implementation of the Order Execution Rules has required market makers to display customers limit orders, thereby compelling CQS market makers, who are not only obligated to execute trades up to 1,000 shares at another market maker's quote, to execute trades at superior-priced limit orders displayed by any other CQS

require a physical entry (such as manual entry to the market maker's internal system which then automatically forwards the update to Nasdaq); and (3) quotation updates that reflect the receipt, execution, or cancellation of a customer limit order.

market maker, even if such limit orders are only for 100 shares. In addition, because Nasdaq no longer processes CQS quotes,⁷ CAES executes orders at the best bid or offer price in the third market instead of the national best bid or offer ("NBBO"). As a result, when there are no CQS market makers at the NBBO, CAES is providing inferior executions to customer orders.

In order to facilitate the best execution of customer orders and not subject CQS market makers to automatic executions at prices other than their posted quotes, the NASD believes it is imperative that CAES be appropriately modified. Accordingly, the NASD has proposed to amend the operation of CAES so that it automatically executes orders up to 100 shares instead of 1,000 shares. An order can be preferenced for larger than 100 shares to a CQS market maker and, although the order will not be automatically executed, the order will be processed by the CQS market maker pursuant to its firm quote obligations.⁸

e. Modifications to the Limit Order Protection Rule Applicable to CQS Securities

NASD proposed to amend Rule 6440 to permit a member to negotiate special terms and conditions with a customer that would enable the firm to trade ahead of, or at the same price as, the limit order price. Specifically, under the Manning Rule, member firms may attach terms and conditions with respect to the handling of limit orders that are either: (1) For institutional accounts,⁹ or (2) limit orders that are for 10,000 shares or greater, regardless of whether they are for institutional accounts, provided that the order is \$100,000 or more in value. The NASD proposed to extend the "terms and conditions" language of the Manning Rule to the CQS limit order protection rule.

III. Discussion

In August 1996, the Commission adopted new Rule 11Ac1-4 ("Limit Order Display Rule") and amendments

⁷ See Exchange Act Release No. 37663, September 10, 1996 (61 FR 48725) (order approving File No. SR-NASD-96-26).

⁸ See 17 CFR 240.11Ac1-1.

⁹ Institutional limit orders are orders for institutional accounts. NASD Rule 3110(c) defines an institutional account as an account for: (1) Banks, savings and loan associations, insurance companies, or registered investment companies; (2) investment advisers registered under Section 203 of the Investment Advisers Act of 1940; and (3) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least \$50 million.

to Rule 11Ac1-1 ("Quote Rule").¹⁰ As amended, the expanded definition of "subject security"¹¹ within the Quote Rule obligates any NASD member that acts in the capacity of an over-the-counter ("OTC") market maker¹² to provide continuous two-sided quotations for any exchange-listed security¹³ in which that member, during the most recent calendar quarter, comprised more than 1% of the aggregate trading volume for such security as reported in the consolidated system ("1% Rule").¹⁴ An OTC market maker must, within 10 business days of the end of each calendar quarter, compute its trading volume for each subject security, and if the volume exceeds 1%, the market maker must begin publishing two-sided quotations.

The Commission began implementing the Order Execution Rules on January 20, 1997. The Commission, however, deferred implementation of the expanded 1% Rule until September 30, 1997.¹⁵ In light of the implementation of the 1% Rule to all exchange-listed securities, the NASD proposed the aforementioned amendments to its rules governing trading in exchange-listed securities in the third market.

The Commission received two comment letters on the proposed rule change. The BankOne comment letter supported the NASD's proposal. The

¹⁰ See Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) ("Adopting Release") adopting the Limit Order Display Rule and amendments to the Quote Rule (collectively the "Order Execution Rules").

¹¹ Rule 11Ac1-1(a)(25).

¹² See Rule 11Ac1-1(a)(13).

¹³ See Rule 11Ac1-1(a)(10) which defines "exchange-traded security" to mean any covered security or class of covered securities listed and registered, or admitted to unlisted trading privileges, on an exchange; provided, however, that securities not listed on any exchange that are traded pursuant to unlisted trading privileges are excluded.

¹⁴ The 1% Rule, prior to being expanded in the Order Execution Rules, applied only to 19c-3 securities. Exchange Act Rule 19c-3 prohibits the application of off-board trading restrictions to securities that: (1) Were not traded on an exchange on or before April 26, 1979; or (2) were traded on an exchange on April 26, 1979, but ceased to be traded on an exchange for any period of time thereafter. Accordingly, exchange-traded securities not subject to off-board trading restrictions are referred to as Rule 19c-3 securities, and exchange-traded securities subject to off-board trading restrictions are referred to as non-Rule 19c-3 securities. The 1% Rule was expanded to include all exchange-listed securities, both Rule 19c-3 and non-Rule 19c-3.

¹⁵ See Securities Exchange Act Release Nos. 38110 (January 2, 1997), 62 FR 1279 (January 9, 1997); 38490 (April 9, 1997), 62 FR 18514 (April 16, 1997); and 38870 (July 24, 1997), 62 FR 40732 (July 30, 1997). Therefore, until September 30, 1997, OTC market makers were only obligated to publicly disseminate quotations when they were responsible for 1% or more of the trading volume in a 19c-3 security.

NYSE comment letter did not address the specifics of the NASD proposal. Nevertheless, the NYSE was concerned with the NASD proposal to amend Rule 6330 to effectively lift its ban on autoquoting because of the conflict with the ITS Plan. Although the ITS Participants are currently discussing whether to amend the ITS Plan with regard to permissible uses of computer-generated quotations, the current ITS Plan limits computer-generated quotations to 100 shares. The ITS Plan governs all ITS Participants, including the NASD. Therefore, the NYSE does not believe the NASD Rule permitting the use of computer-generated quotations should be extended to those exchange-listed securities that are included in the ITS.

In response to the NYSE comment letter, and in recognition of the lack of unanimous consensus from ITS Participants, the NASD filed Amendment No. 2 to the proposal requesting the Commission to proceed with the proposed rule change with respect to non-Rule 19c-3 securities. The NASD also noted that they are concerned that market makers may experience difficulty in using enhanced automation support if they are only permitted to do so for a portion (*i.e.*, non-Rule 19c-3 securities) of the exchange-listed securities they maintain quotations in. Therefore, the practical result of removing the burdens of complying with the 1% Rule would be lost.

In expanding the 1% Rule, the Commission recognized that it raised an issue with respect to the ability of NASD members to autoquote. The Commission stated that "a total prohibition on the use of computer generated quotes is not appropriate" and that "[s]uch an approach excessively limits the use of sophisticated trading strategies that rely on automation in the quotation process for their success, and it also may act as a competitive disadvantage to market makers and specialists that would otherwise rely on technology to meet their quotation obligations more efficiently."¹⁶ While the Commission noted that it "recognizes traditional concerns related to the accessibility of computer generated quotes and the impact of such quotes on system capacity, it believes that more can and should be done in this area."¹⁷ The Commission stressed that more should be done particularly "given the enhanced quotation obligations that will be imposed on some market participants

under the revised Quote Rule."¹⁸ The Commission, therefore, urged the "NASD, ITS Participants, and other interested market participants to develop revised standards that would permit the use of computer generated quotes that contribute value to the market."¹⁹

The Commission believes the NASD proposal provides its members with the ability to use computer-generated quotations that add value to the market and do not raise quotation accessibility concerns. The NASD proposal does not permit autoquoting away which would subject Nasdaq to capacity constraints as well compromise the value of quotations. The Commission believes the proposal facilitates the implementation of the Order Execution Rules, specifically, the 1% Rule by providing OTC market makers with the ability to use computer-generated quotations. The Commission notes, however, that permitting computer-generated quotations for only non-Rule 19c-3 securities may inhibit some market makers because they may not be able to distinguish those quotations from their quotations in other exchange-listed securities. The Commission expects that the ITS Participants will continue in their discussions to amend the ITS Plan to permit computer-generated quotations. In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation.²⁰

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to the NASD and, in particular, Sections 11A(a)(1)(D), 11A(a)(2) and 15A(b)(6) of the Exchange Act.²¹ Section 11A(a)(1)(D) of the Exchange Act states that the linking of all markets for qualified securities through communications and data processing facilities will foster efficiency, enhance competition, increase the information

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ 15 U.S.C. 78c(f).

²¹ In addition, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. The proposed rule will likely contribute to more accurate and informative quotations because market makers are able to use automated measures to produce accessible quotations that add value to the market. The Commission believes that permitting the use of automated quotations by CQS market makers allows them to utilize technology to fulfill their quotation obligations efficiently. Moreover, allowing CQS market makers to utilize technology in this manner reduces any competitive disadvantage that the previous auto-quote ban may have created. 15 U.S.C. § 78c(f).

available to brokers, dealers and investors, facilitate the offsetting of investor's orders and contribute to best execution of such orders, and subsection (a)(2) thereunder directs the Commission to facilitate the establishment of a national market system for qualified securities. 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 an 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.

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, 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 provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 should be submitted by December 29, 1997.

V. Conclusion

For the reasons discussed in this order, pursuant to Section 19(b)(2) of the Exchange Act,²² the Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,

²² 15 U.S.C. 78s(b)(2).

¹⁶ See Adopting Release at Section III.B.3.c.i.

¹⁷ *Id.*

that the proposed rule change (NASD-97-53) be, and hereby is, approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.²³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-31754 Filed 12-3-97; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 2658]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, December 17-18, 1997, in Conference Rooms 1205 and 7516.

The Committee will meet in open session from 9 a.m. through 12 p.m. on the morning of Wednesday, December 17, 1997. The remainder of the Committee's sessions from 1:45 p.m. on Wednesday December 17, until 5 p.m. on Thursday, December 18, 1997, will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463). It has been determined that discussions during these portions of the meeting will involve consideration of matters not subject to public disclosure under 5 U.S.C. 552(b)(1), and that the public interest requires that such activities will be withheld from disclosure.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20520, telephone (202) 663-1123, (e-mail pahistoff@panet.us-state.gov).

Dated: November 17, 1997.

William Z. Slany,

Executive Secretary.

[FR Doc. 97-31773 Filed 12-3-97; 8:45 am]

BILLING CODE 4710-11-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-97-60]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 15, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9-NPRM-CMNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Angela Anderson (202) 267-9681 or Tawana Matthews (202) 267-9783, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on December 1, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions For Exemption

Docket No.: 28846.

Petitioner: Gulfstream International Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.2(d)(1)(I)(D), 121.337(b)(8), 121.359(g).

Description of Relief Sought: To permit Gulfstream to operate 25 Beechcraft 1900C airplanes in passenger-carrying operations without approved smoked and fume protective breathing equipment for flight crewmembers until March 20, 1998.

[FR Doc. 97-31790 Filed 12-3-97; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at Melbourne International Airport, Melbourne, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Melbourne International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 5, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5990 Hazeltine National Dr., Suite 400, Orlando Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James C. Johnson, Director of Aviation of the Melbourne Airport Authority at the following address: Melbourne Airport Authority, Melbourne International Airport, One Air Terminal Parkway, Suite 220, Melbourne, Florida 32901-1888.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Melbourne Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Vernon P. Rupinta, Project Manager, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando Florida 32822, 407-812-6331. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public

²³ 17 CFR 200.30-3(A)(12).