closing value. The collars would be removed when the DJIA comes back or retreats to a value which represents a decline or advance from the prior day's close by an amount equal to one half of the ''two percent value'' (rounded down to the nearest ten points). The proposed collars are to be calculated quarterly based on the average closing value of the DJIA for the last month of the previous calendar quarter.

The BSE proposed to modify Section 34B to reflect the NYSE rule change, by replacing the 50 point collar with a level based on two percent of the DJIA. When the DJIA declines by the ''collar value,'' all index arbitrage orders to sell any component stock of the S&P 500 must be marked ''sell plus'' for the remainder of the day. If the DJIA advances by the ''collar value,'' all index arbitrage orders to buy any component stock of the S&P 500 must be marked ''buy minus'' for the remainder of the trading day.

In addition, the BSE is proposing to delete the stop and stop limit order restrictions found in Section 35(b) and Supplementary Material .01, in response to the NYSE's elimination of the sidecar provisions of NYSE Rule 80A.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general,[4] and furthers the objectives of Section 6(b)(5) in particular,[5] in that it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanisms of a free and open market and, in general, to protect investors and the public interest.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

After careful consideration, the Commission has concluded, for the reasons set forth below, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. Both BSE rules in question—the 50 point collar provision of Chapter II, Section 34B, and the ''sidecar'' stop and stop limit order restrictions of Chapter II, Section 35(b) and Supplementary Material .01—are substantially similar to recently changed NYSE rules. Modifying the BSE rules to conform to the counterpart NYSE rules will eliminate a needless disparity between the practices of the two exchanges. Moreover, the Commission noted in its order approving the proposed NYSE rule changes that the sidecar provisions appeared unnecessary and that eliminating them was in the public interest. The Commission also noted that widening the collar provisions represented an improvement over the earlier trading restrictions, and the Commission recommended that the NYSE periodically evaluate the continuing need for those restrictions on index arbitrage. The Commission believes that the same principles apply to the BSE.

The BSE has requested that the Commission grant accelerated approval of the proposed rule change to correspond with the NYSE's recent rule changes. 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 in the **Federal Register**. The Commission has already approved an equivalent rule change for the NYSE after careful analysis of public comments. Moreover, maintaining the existing trading restrictions on the BSE, even after they have been relaxed on the NYSE, may affect broker-dealer order routing decisions in a way that is contrary to the competitive intent behind the National Market System.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. 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 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–98–3 and should be submitted by April 21, 1999.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act[6] that the proposed rule change (SR–BSE–99–3) is hereby approved on an accelerated basis.[7]

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–7807 Filed 3–30–99; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f(b).

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

[6] 15 U.S.C. 78s(b)(2).

[7] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41208; File No. SR–NASD–98–59]

Self-Regulatory Organizations; Order Approving Rule Change by the National Association of Securities Dealers, Inc. Relating to Trade Reporting

March 24, 1999.

I. Introduction

On August 10, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), 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 amend the trade reporting rules of the NASD to extend to market makers an exception to the reporting of riskless transactions in Nasdaq National Market, Nasdaq Smallcap, Nasdaq convertible debt, and non-Nasdaq OTC equity securities. The proposed rule change was published for comment in the **Federal Register** on September 4, 1998.[3] This order approves the proposal.

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

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 40832 (August 28, 1998), 63 FR 47337.

II. Description of the Proposal

The rules for reporting trades in Nasdaq securities have long existed in their current form. The rules were broadly designed to capture all trading activity by broker-dealers, both dealer to dealer trades and traders with customers. These rules, and the trade reports that result, serve several important purposes. They form the basis for public dissemination of last sale transaction prices to the tape, thus providing transparency of the Nasdaq market. They are also an integral part of the audit trail used by the NASD in its regulatory efforts to surveil and regulate firms' activities. Given the historical structure of the dealer markets and the needs to provide a comprehensive view of all trading. NASD trade reporting rules currently require the reporting of all principal trades by market makers.

Non-market makers, however, generally do not report all principal trades under current rules, to the extent the trades are defined as ''riskless''—that is, they involve a trade with another member, usually a market maker, that is used to offset a trade with a customer. Even though the non-market maker firm is involved in two separate trades against its principal account, it reports one transaction to the NASD.

In light of the growth and evolution of the structure of the Nasdaq market, and in particular the recent implementation of the SEC Order Handling Rules, [4] the NASD is proposing to extend this riskless principal exception to market makers as well. Thus, certain matching principal trades involving a market maker would be explicitly included within the riskless definition, and reported to the public tape only once.

For example, under the SEC Order Handling Rules, market makers now display certain customer limit orders in their public quotes. [5] Those orders are often filled by the market maker when that quote is accessed by another market participant. [6] Because market makers generally trade exclusively from a principal account, they engage in two separate principal trades: one with the other market participant, and then another directly with the customer. Both of these trades are reported by market makers under current rules. In effect, however, these two trades can be viewed as one event—the execution of a customer order upon the execution of an offsetting transaction obtained by the market maker. Under the proposed rule change, these two trades would be reported only once.

A riskless principal trade can also be viewed as one that involves two orders, the execution of one being dependent upon the receipt or execution of the other. For example, the execution of an institutional customer order may be dependent upon finding the other side, in whole or in part. To the extent that any of the order is offset with another principal execution, that portion would be deemed riskless and should be reported only once.

The effect of the proposed rule change can be illustrated in the following examples. A market maker (MMI) holds a customer limit order that is displayed in its quote to buy 1000 shares of ABCD at $10. MM2 sells 1000 shares to MMI at $10. MM2 reports the sale of 1000 shares, as required under current rules. [7]MM1 then fills its customer order for 1000 shares at the same price, exclusive of any mark-up or commission. Under the proposal, the first trade would continue to be reported (by the selling firm MM2 in this case, as required under current rules), but the second leg between MM1 and the customer would not be reported again, as it is deemed riskless. If the first execution were through a Nasdaq facility that automatically generates a trade report to the trade, such as SOES or SelectNet, no member would report at all. Of course, members may still need to submit a ''clearing only'' entry into ACT to complete the transaction with the customer, but these submissions are not reporting purposes. Thus, there will be no public trade report for the second leg of the transaction.

In another example, an institutional customer presents a large order to a market maker (MM1) to sell 100,000 shares of XYZZ, with instructions to work the order, subject to a price limit. The market maker may attempt to solicit interest from other parties to fill the institutional order, in whole or in part. The market maker may find a willing buyer, but for only 75,000 shares, at a price of $12 per share. The market maker may determine to fill the entire customer order for 100,000 shares at $12 per share at that time (exclusive of any markdown, commission equivalent, or other fee), by trading the 25,000 share balance out of inventory. Here, there will still be two separate trade reports under the proposal because only a portion of the customer execution is deemed riskless. The size of the trade reports, however, will be adjusted to exclude the riskless portion. Specifically, instead of MM1 reporting these as a market maker sell transaction of 75,000 shares and then a market maker buy from the customer for 100,000 shares, these trades would be reported under the proposal as a market maker sell transaction of 75,000 shares and then a market maker buy from the customer of only 25,000 shares.[8]

In another variation of the previous example, MM1, while holding the institutional customer order and working it on their behalf, may obtain several executions to satisfy the order by selling to other market participants at varying prices throughout the trading day. In this example, assume that the entire order is filled with these individual executions. Because MM1 is the seller in these executions, it has the trade reporting responsibility and will continue to report under current rules each individual component trade with other market participants as they occur. Under the proposal, however, MM1 would not report the transaction with the customer, as the executions used to satisfy the order already have been reported to the tape. The transactions, however, may be confirmed to the customer at an average price of the component executions, to the extent permissible under Rule 10b–10 of the Act.[9]

In addition, the NASD is clarifying the riskless principal trade reporting provision to ensure its consistent application to any order received by a member, regardless of the person or entity that it was received from. Specifically, while the current rule refers to orders received from a ''customer,'' the proposed rule simply refers to ''an order.'' Thus, a transaction is considered riskless regardless of

[4] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996).

[5] 17 CFR 240.11Ac1–4(b).

[6] In fact, NASD Rule IM–2110–2 (Limit Order Protection Rule) requires market makers to execute customer limit orders (regardless of whether the customer is theirs or that of another member) when trading as principal at prices that would satisfy the customer's limit order. *See* NASD Rule IM–2110–2; and Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996).

[7] *See, e.g.,* NASD Rule 4632(b), which requires the selling market maker to report in a transaction between two market makers.

[8] It should be noted that in this particular example, the market maker with the order is responsible for reporting both legs of the transaction. If the customer were *buying* stock in the same example, and the market maker first buys 75,000 shares from another market maker, the 75,000 share trade would be reported by the selling market maker under current NASD rules (*i.e.,* seller reports in a trade between two market makers). The market maker with the customer order would still report the 25,000 share trade.

[9] *See, e.g.,* SEC no-action letter from Catherine McGuire, SEC, to Eugene Lopez, the Nasdaq Stock Market, dated May 6, 1997 (permitting the issuance of a single confirmation at any average price and with multiple capacities for a single customer order effected with multiple executions).

whether the market maker is holding an order from a customer, another member, the customer of another member, or any other entity, including non-member broker-dealers. Furthermore, the text of the rule is being amended to more clearly provide that such trades are reported exclusive of any mark-up, mark-down, commission, or other fee.

III. Discussion

The Commission finds that the proposed rule change is consistent with Section 15A of the Act [10] and the rules and regulations thereunder. In particular, the Commission believes that the proposal is consistent with the Section 15A(b)(6) [11] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, 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.[12]

The Commission agrees with the NASD that, for reporting purposes, it is appropriate to treat riskless principal trades as one trade. As the NASD noted, with the implementation of the SEC Order Handling rules, which generally require that a broker-dealer publish its customer's limit orders,[13] the number of riskless principal transactions executed by NASD member firms has increased. Reducing the number of transactions required to be reported should result in a corresponding reduction in transaction fees.

Moreover, current NASD rules for reporting principal transactions allow members that are not acting as market makers to report a riskless principal transaction as one transaction. In the past, the Commission has been concerned that a market maker making a continuous two-sided market might have difficulty identifying when a riskless principal transaction was effected. Accordingly, the principal trade reporting rule required members effecting riskless principal trades as a market maker to report both sides of the trade in an effort to avoid the possibility that compliance problems and interpretive difficulties would arise. Due to advances in the NASD's technology, however, the Commission believes that it is now appropriate for the NASD to allow a member acting as market maker to report riskless principal transactions as one transaction. The NASD has recently begun implementing its Order Audit Trail System [14] (''OATS''), which, among other things, requires market makers to record and report certain information with respect to each order, including the origin of the order (*i.e.*, in-house, customer, or another member). The implementation of OATS should assist the NASD in determining whether a trade is properly reported as a riskless principal transaction. For these reasons, the Commission believes that extending the riskless principal exception for trade reporting to market makers so that they can report certain matching principal trades only one is reasonable and consistent with the Act.[15]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2§ of the Act,[16] that the proposed rule change (SR–NASD–98–59) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–7805 Filed 3–30–99; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78o–3.

[11] U.S.C. 78o–3(b)(6).

[12] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 240.11Ac1–4(b).

[14] OATS will be implemented in several phases. At this time, OATS reporting requirements have only been implemented for electronic orders received by ECNs and market makers in the securities in which they make a market. *See* Securities Exchange Act Release No. 39729 (March 6, 1998), 63 FR 12559 (March 13, 1998) (order approving File No. SR–NASD–97–56).

[15] The Commission notes that a riskless principal transaction is defined as a transaction where a member, after having received an order to buy a security, purchases the security as principal at the same price to satisfy the order to buy or, after having received an order to sell, sells the security as principal at the same price to satisfy the order to sell, excluding the mark-up or mark-down, commission-equivalent, or other fee. The Commission expects that the NASD will issue an interpretation giving examples of how mark-ups and other fees will be excluded for purposes of determining whether a trade is at the same price.

[16] 15 U.S.C. 78s(b)(2).

[17] For the Commission, he

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41206; File No. SR–PCX–99–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Matters Subject to Arbitration

March 23, 1999.

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 February 3, 1999, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is proposing to change PCX Rule 12.1 to allow for claims related to employment, including sexual harassment, or any discrimination claim in violation of a statute, to be eligible for submission to arbitration only where all parties have agreed to arbitration after the claim has arisen. The text in brackets will be deleted, and the text in italics will be added. The text of the proposed rule change is as follows:

* * * * *

Matters Subject to Arbitration

Rule 12.1(a) No change.

(b) Any claim which is related to employment, including any sexual harassment or any discrimination claim in violation of a statute, will be eligible for submission to arbitration under this Rule only where all parties have agreed to arbitrate the claim after it has arisen.

[(b)]*(c)* Any dispute, claim or controversy between a customer or non-member and a member, member organization and/or associated person arising in connection with the securities business of such member, member organization and/or associated person shall be arbitrated under this Rule as provided by any duly executed and enforceable written document, or upon the request of the customer or non-member.

[(c) Any dispute, claim or controversy between a member and an employee of such member which is related to such employment shall, at the request of any such party, be submitted for arbitration in accordance with this Rule.]

(d)–(g) No change.

* * * * *

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 Exchange 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

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

[2] 17 CFR 240.19b-4.