Specifically, the Commission believes that the proposal is consistent with Section 15A(b)(6) of the Act [13] in that it is designed to promote just and equitable principles of trade, to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Section 15A(b)(9) of the Act [14] in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Any trade in unregistered corporate debt securities on NYSE will automatically be captured by NYSE's systems. The Commission understands that NYSE will provide data on such trades to NASD for surveillance purposes. Therefore, NASD should be able to obtain necessary surveillance data without subjecting joint NYSE/NASD members to a duplicative reporting requirement. The Commission concludes that it is reasonable and consistent with the Act for NASD to eliminate from its rules the requirement that a trade executed on NYSE also be reported to TRACE.[15]

Pursuant to Section 19(b)(2) of the Act,[16] the Commission finds good cause for approving the proposed rule change, as amended, before the thirtieth day after the date of publication of notice of filing thereof. Accelerating approval of this proposed rule change will immediately eliminate double-reporting of certain bond trades and thereby eliminate an unnecessary burden on NYSE members trading corporate bonds pursuant to the terms of an exemption being granted in a related action today by the Commission.[17] The Commission believes that NASD's rule change raises no issues of regulatory concern, because NASD should have access to sufficient regulatory information relating to the exempted bond trades through the information-sharing agreement it will enter with NYSE. Therefore, the Commission does not believe it is necessary or appropriate to delay approval and implementation of this proposal pending a notice-and-comment period.

[13] 15 U.S.C. 78*o*–3(b)(6).

[14] 15 U.S.C. 78*o*–3(b)(9).

[15] The Commission will continue to monitor the growth of intermarket competition in the corporate bond markets and, in the event market fragmentation becomes a concern, will consider appropriate means to address the consolidation of market information for corporate bonds.

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

[17] *See* Securities Exchange Act Release No. 54766 (November 16, 2006) (File No. S7–06–05).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NASD–2006–110), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19728 Filed 11–21–06; 8:45 am]

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[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54755; File No. SR–NASD–2006–007]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Order Approving Proposed Rule Change Relating to Option Position and Exercise Limits and Position Reporting Obligations; and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto

November 15, 2006.

I. Introduction

On January 23, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Rule 2860, which relates to position and exercise limits and position reporting obligations for members that hold positions in index and equity options or that represent customers holding such positions. The proposed rule change was published for comment in the **Federal Register** on February 6, 2006.[3] The Commission received one comment on the proposal.[4] In its comment letter, the Securities Industry Association (''SIA'') ''endorse[d] the adoption of clear and objective criteria for identifying those index options that would be exempt from NASD option position and exercise limits.'' [5] However, the SIA also recommended ''streamlining the relevant standards and easing the operational steps necessary for NASD member firms to verify compliance with the Proposed Rule Change.'' [6] In response to this comment, NASD filed Amendment No. 1 to the proposed rule change on September 20, 2006.[7] This notice and order solicits comments from interested persons on Amendment No. 1 and approves the proposal, as amended by Amendment No. 1, on an accelerated basis.

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 53189 (January 30, 2006), 71 FR 6117.

[4] *See* letter from John R. Vitha, Esq., Chairman, Securities Industry Association Derivative Product Committee, to Nancy M. Morris, Secretary, Commission, dated May 23, 2006 (''SIA Letter'').

[5] *Id.* at 1.

II. Description of the Proposal

A. Position Limits for OTC Index Options

NASD currently prohibits its members, for their proprietary or agency accounts, from holding positions in over-the-counter (''OTC'') equity options [8] that exceed certain position limits.[9] NASD also imposes exercise limits on a member that holds OTC equity options; the member may not exercise, within a period of five consecutive business days, a number of option contracts that exceeds the same number established for the position limit.[10] The position limits that NASD imposes on its members for OTC equity options are based on similar standards established by the option exchanges for ''standardized'' equity options.[11] In contrast, NASD rules impose no position limits on OTC index options, but do not clarify what constitutes an OTC index option for this purpose.

NASD believes that some indexes underlying OTC options might have economic characteristics more closely resembling single securities than broad-based indexes. This could be the case, for example, where the index consisted of only a small number of securities or if one or a few securities represented a significant percentage of the index's weighting. In its initial filing, NASD proposed 11 criteria an index would have to meet to be sufficiently broad-based for an option on that index to be

[6] *Id.*

[7] The text of Amendment No. 1 is available on the NASD's Web site (*http://www.nasd.com*), at NASD's principal office, and at the Commission's Public Reference Room.

[8] An ''OTC option'' for the purposes of this approval order means any option contract not issued or subject to issuance by the Options Clearing Corporation (''OCC'').

[9] These position limits vary depending on the characteristics of the security underlying the OTC option. *See* NASD Rule 2860(b)(3)(A)(viii).

[10] *See* NASD Rule 2860(b)(4). NASD's proposal will impact its exercise limits in the same way as it will change its position limits.

[11] The term ''standardized equity option'' means any equity options contract issued, or subject to issuance by, The Options Clearing Corporation that is not a FLEX Equity Option. *See* NASD Rule 2860(b)(2)(UU).

deemed a ''conventional index option'' under proposed NASD Rule 2860(b)(2)(N).[12] A position in a ''conventional index option'' would continue to be free from any position limits imposed by NASD rules. In addition, a position in an OTC option overlying the same index as an exchange-traded option would not be subject to position limits. A position in an OTC index option that did not either qualify as a ''conventional index option'' or overlie the same index as an exchange-traded option would in effect be deconstructed into separate equity option components, and NASD position limits would apply with respect to each component.[13]

In response to the SIA Comment Letter, NASD in Amendment No. 1 replaced the 11 originally proposed criteria for a ''conventional index option'' with the following criteria:

- An index must contain nine or more equity securities.
- No equity security may comprise more than 30% of the equity security component of the index's weighting.
- Each equity security in the index is either:

1. A component security of the Russell 3000 Index or the FTSE All-World Index Series; or
2. Characterized by a minimum market capitalization and minimum trading volume.[14]

The SIA recommended basing the definition of a ''conventional index option,'' in part, on the definition under the Exchange Act of what is not a ''narrow-based security index.''[15] As provided in that definition, the SIA recommended replacing the requirement that a qualifying index be comprised of ten or more securities with a requirement that an index be comprised of nine or more securities. Similarly, the SIA also recommended that the NASD amend its proposal to conform with the criterion under the Exchange Act definition described above, to provide that no equity security in the index represent more than 30% of the equity security component of the index. NASD adopted both of these recommendations.

In its original filing, NASD required that the components of an index underlying a ''conventional index option'' be characterized by certain minimum market capitalization and liquidity standards.[16] The SIA suggested that NASD treat components of the Russell 3000 Index and the FTSE All-World Index Series as meeting such quantitative standards without measuring the actual market capitalization and trading volume of such components.[17] In Amendment No. 1, NASD retained the quantitative standards for market capitalization and trading volume, but allowed that condition to be met if an equity security is included in the Russell 3000 Index or the FTSE All-World Index Series. NASD believes that these indexes are reasonable surrogates for the quantitative measurements, and that these alternative criteria would reduce the compliance burden for members to monitor capitalization and trading volume of the index components.

NASD believes that the criteria it proposed in Amendment No. 1 to replace the original 11 criteria impose sufficient parameters on the components of the index to ensure that a qualifying index would not be so narrowly constructed as to have the economic characteristics of a single security or small group of securities. Accordingly, NASD in Amendment No. 1 eliminated the remaining criteria proposed in the original filing.

B. Large Options Position Reporting

Under existing NASD Rule 2860(b)(5)(A)(i)(a), an NASD member must report a position of 200 contracts or more in any OTC option covering an ''underlying security or index.''[18] On June 30, 2006, the Commission approved an NASD rule change that, among other things, eliminated the term ''underlying index,'' which was defined to mean ''an index upon which a Nasdaq index option contract is based.''[19] Accordingly, NASD rules currently provide no standard for the types of OTC index options for which members must report large positions. NASD's initial proposal would have clarified this situation by requiring a member to report a position of 200 or more contracts in: (1) An OTC option on an index underlying an exchange-traded option, or (2) a ''conventional index option,'' as defined in proposed NASD Rule 2860(b)(2)(N).

In its comment letter, the SIA suggested that a position in an OTC index option should be exempt from any position reporting requirements unless the OTC option overlies the same index as an exchange-traded option. NASD generally agrees with the SIA's approach and is proposing to revise its Rule 2860(b)(5) to provide that a member must report a position in a ''conventional index option'' only when such option is based on an index that underlies, or is substantially similar to an index that underlies, an exchange-traded option. This approach would enable NASD Market Regulation staff to analyze the exchange-traded and OTC markets in aggregate for options on the same or substantially similar indexes.[20] NASD believes that position reporting for other conventional index options would be of little regulatory interest and represents that, to the extent it requires information about a position in a conventional index option on a specially negotiated index or group of underlying securities, it can obtain such information from a member pursuant to

[12] The 11 criteria originally proposed by NASD to define a ''conventional index option'' were as follows:

a) The option must be A.M.-settled;

b) The index must be weighted pursuant to one of a number of widely recognized methodologies;

c) The index must consist of ten or more component securities;

d) Each component security must be characterized by a minimum market capitalization;

e) Each component security must be characterized by a minimum trading volume;

f) The most highly weighted components of the index must be characterized by heightened trading volume, as compared to the remaining components;

g) No single component security or group of five securities may represent more than a maximum concentration of the index;

h) All component securities are ''NMS securities'' as defined in Regulation NMS;

i) Certain non-U.S. component securities may not, in the aggregate, represent more than a maximum weight of the index;

j) An equal dollar-weighted index will be rebalanced once every quarter; and

k) If an underlying index is maintained by a broker-dealer, the index must be calculated by a third party that has implemented appropriate information barriers around its personnel who have access to information about changes to the index.

[13] *See* NASD Rule 2860(b)(2)(JJ).

[14] Specifically, each equity security in the index must: (A) Have a market capitalization of at least $75 million, or, in the case of the lowest weighted component securities in the basket or index in the aggregate account for no more than 10% of the weight of the index $50 million; and (B) have a trading volume for each of the preceding six months of at least one million shares or, in the case of each of the lowest weighted component securities in the basket or index that in the aggregate account for no more than 10% of the weight of the index, 500,000 shares.

[15] *See* 15 U.S.C. 78c(a)(55)(C).

[16] *See supra* note 14

[17] *See* SIA Letter at 3.

[18] When a member conducts a business in standardized (*i.e.*, exchange-traded) options but is not a member of the exchange on which the option is traded (*i.e.* is an ''access firm''), the member also must report to NASD a position of 200 contracts or more in a standardized option. *See* NASD Rule 2860(b)(5)(A)(i)(b). Nothing in this proposal affects an access firm's obligation to report positions in standardized options.

[19] The proposed rule change amended various NASD rules in anticipation of the Nasdaq Stock Market's separation from NASD. *See* Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (SR–NASD–2005–087).

[20] Telephone conversation among Gary Goldsholle, Associate General Counsel, NASD, Kathryn Moore, Assistant General Counsel, NASD, and Tim Fox, Special Counsel, Commission, on October 31, 2006.

a request under NASD Rule 8210.[21] Thus, NASD believes that eliminating this position reporting requirement would not prevent it from accessing information relating to a conventional index option position as needed to carry out its market oversight and enforcement responsibilities.

Finally, the SIA urged NASD to revisit the threshold at which position reporting applies, for the OTC options where position reporting is required.[22] The SIA suggested raising the threshold from the current 200 contracts to 10,000 contracts. NASD stated in Amendment No. 1 that it does not believe such a change is appropriate or necessary at this time. However, NASD stated that it will consider this issue and subject it to further review and discussion with the other self-regulatory organizations.

C. Position Limits for Options on Foreign Equity Securities

Under existing NASD Rule 2860(b)(3)(A)(viii), the position limits for conventional equity options parallel the limits for the standardized options on the same security. Therefore, if a standardized equity option is subject to a higher tier of position limits because of the relatively liquid and deep nature of the market for the underlying security, then a conventional option on the same security would be subject to a higher tier as well. On the other hand, with respect to an OTC option on an equally liquid foreign security, for which no exchange-traded equivalent exists, a member is required to limit its holdings (or its customer's holdings) to the lowest tier of position limits, absent prior approval of NASD staff. To alleviate this disparate treatment of OTC options on foreign equities, NASD proposed in the original filing to allow the higher tiers of position limits for OTC options overlying equity components of the FTSE All-World Index Series [23] meeting the volume and float criteria established by the options exchanges for standardized options on domestic equity securities.[24]

Under the proposed rule change, a member would file a post-trade notice—within one business day—with NASD staff providing the necessary trade volume data and/or current float data to support the member's position limit calculation. NASD staff would review the member's notice, and, if the staff determined that a member incorrectly assigned a position limit, a staff member would instruct the firm to reduce its position below the appropriate limits determined by NASD staff. The Commission received no comments on this aspect of the proposal.

D. Miscellaneous Issues

The SIA also suggested revising the definition of ''conventional index option'' to permit the inclusion of financial assets other than equity securities.[25] NASD believes that the originally proposed definition of ''conventional index option'' permits the inclusion of non-equity assets and is not proposing any change to the rule text to accommodate SIA's suggestion. According to NASD, financial assets other than equity securities could be part of an index and the option thereon could still qualify as a ''conventional index option'' if the equity security components of the index together met the criteria in the definition.

In addition to changes in response to the SIA Letter, NASD in Amendment No. 1 proposed to clarify the date on which an OTC index option would or would not qualify as a ''conventional index option.'' The revised rules clarify that the definition's requirements apply as of the date the option position is created.[26] NASD designed this approach to clarify that subsequent events that might impact an index's components would not change how an option on that index is treated for purposes of NASD's position limits and position reporting rules.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities association and, in particular, the requirements of Section 15A(b)(6) of the Exchange Act,[27] which requires that the rules of the NASD be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.[28] The Commission believes the proposed rule change is reasonably designed to enhance the NASD's ability to monitor the options positions of members and their customers and to clarify applicable position limits. In particular, the Commission believes that the NASD rules it is approving today reasonably differentiate between broad-based indexes and indexes whose economic characteristics more closely approximate those of a single security or a small number of securities. The Commission believes that the proposal is designed to balance between allowing the NASD to obtain information for surveilling the market in OTC index options and limiting the burdens on NASD members that hold positions in such options.

The Commission finds good cause for approving the proposal, as amended by Amendment No. 1, prior to the thirtieth day after the amended proposal is published for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Exchange Act.[29] The Commission believes that Amendment No. 1 does not make any changes to the proposal that would adversely impact investor protection or the public interest. The Commission notes that it received only one comment letter in response to NASD's original proposal.[30] Amendment No. 1 is generally responsive to the commenter's concerns and does not materially alter the proposal. The Commission notes that accelerating approval will enable NASD to implement the proposed rule changes without further delay.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[21] However, a position in an OTC index option that did not qualify as a ''conventional index option'' would in effect be deconstructed into separate equity option components, and the position reporting obligation would apply with respect to each component. *See* NASD Rule 2860(b)(2)(JJ).

[22] *See* SIA Letter at 4.

[23] NASD has represented that, if it designates another index in addition to or instead of the FTSE All-World Index Series, NASD would publish the designation of the new index in a *Notice to Members* and provide members at least 30 days' written notice of the change.

[24] *See* Commentary .07 to American Stock Exchange Rule 904, Section 7(c) of Chapter III of the Boston Options Exchange Rules, Interpretation .02 to Chicago Board Options Exchange (''CBOE'') Rule 4.11; International Securities Exchange Rule 412(d); Commentary .06 to NYSE Arca Rule 6.8; Commentary .05 to Philadelphia Stock Exchange Rule 1001.

[25] *See* SIA Letter at 4.

[26] Telephone conversation between Gary Goldsholle, Associate GeneralCounsel, NASD, and Tim Fox, Division of Market Regulation, Commission on October 19, 2006.

[27] 15 U.S.C. 78*o*–3(b)(6).

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

[29] 15 U.S.C. 78s(b)(2).

[30] *See* SIA Letter, *supra* note 4.

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2006–007 on the subject line.

Paper comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to Amendment No. 1 to File Number SR–NASD–2006–007. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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 Section, Station Place, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to Amendment No. 1 to File Number SR–NASD–2006–007 and should be submitted on or before December 13, 2006.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[31] that the proposed rule change (SR–NASD–2006–007) be, and hereby is approved, and that Amendment No. 1 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[32]

Nancy M. Morris,

Secretary.

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[31] *Id.*

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54753; File No. SR–NSX–2006–14]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto To Implement a Fee Schedule Under NSX Rule 16.1(a) and 16.1(c) for Transactions Executed Through NSTS and To Modify a Fee Schedule for ITS Transactions

November 14, 2006.

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 October 31, 2006, the National Stock Exchange, Inc. (''NSX'' 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 substantially prepared by the Exchange. On November 13, 2006, NSX submitted Amendment No. 1 to the proposed rule change. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to implement a new Fee Schedule to supplement Exchange Rule 11.10 for transactions executed through the Exchange's National Securities Trading System (''NSTS''), and to amend the Fee Schedule applicable to transactions under the Intermarket Trading System Plan and/or the Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage (''ITS Plans''), both to provide for an execution fee and a rebate for executions in Exchange Traded Funds (''ETFs'') classified as Tape B securities. The other fees for executions through NSTS during the phase-in period of Exchange's new trading system, NSX BLADE, will remain the fees contained in NSX Rule 11.10. The text of the proposed rule change, as amended, is available on the Exchange's Web site at *http://www.nsx.com*, at the principal office of NSX, and at the Commission's Public Reference Room.

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

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, as amended, 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 IV below. The Exchange 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 Exchange proposes to (i) Provide for a rebate of $0.0027 per share executed for adding liquidity in NSTS for ETFs that are classified as Tape B securities and (ii) charge a liquidity taker fee of $0.0030 per share for transactions in ETFs that are classified as Tape B securities via NSTS, including transactions executed through the auspices of the ITS Plans.

Background

The Exchange has created a new state of the art trading platform, known as NSX BLADE, that utilizes a strict price/time priority system as the ultimate replacement for NSTS. In connection with the new trading platform, the Exchange filed a proposed rule change to accommodate the new trading platform, which was approved on August 31, 2006.[5]

As part of that rule filing, the Exchange stated that NSX BLADE will be phased in gradually—first with a small group of Tape C securities over several weeks until all Tape C securities have been transitioned to the new system. Once all Tape C securities have been transitioned to NSX BLADE, the Exchange will then transition all Tape A and Tape B securities.[6]

[5] *See* Securities Exchange Act Release No. 54391 (August 31, 2006), 71 FR 52836 (September 7, 2006) (order approving SR–NSX–2006–08).

[6] The Exchange commenced the gradual phase-in of NSXBLADE on October 23, 2006 with the