

contained in its regulation on Redetermination of Withdrawal Liability Upon Mass Withdrawal (29 CFR Part 2648).

ADDRESSES: All written comments should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503. The request for extension will be available for public inspection at the PBGC

Communications and Public Affairs Department, Suite 240, 1200 K Street, N.W., Washington, DC 20005-4026, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel, Suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, N.W., Washington, DC 20005-4026, 202-326-4024 (202-326-4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: This collection of information is contained in the Pension Benefit Guaranty Corporation's regulation on Redetermination of Withdrawal Liability Upon Mass Withdrawal (29 CFR Part 2648).

The regulation on Redetermination of Withdrawal Liability Upon Mass Withdrawal is issued pursuant to section 4219(c)(1)(D) of the Employee Retirement Income Security Act of 1974, which provides for the allocation of a multiemployer plan's total unfunded vested benefits in the event of a "mass withdrawal," *i.e.*, either (1) a plan termination due to the withdrawal of every employer or (2) a withdrawal of substantially all employers pursuant to an agreement or arrangement to withdraw. The regulation also provides rules under ERISA section 4209(c), dealing with employer liability for *de minimis* amounts in a "substantial withdrawal," *i.e.*, a withdrawal of substantially all employers within one year.

The regulation requires a plan to report to the PBGC when it experiences a "mass withdrawal" or "substantial withdrawal" and certify that liability has been determined and assessed to employers as required. This enables the PBGC to monitor compliance with ERISA and the regulation and thus guard against the increased risk of plan insolvency (with resulting benefit losses to participants and claims against the insurance program) caused by the "mass withdrawal" or "substantial withdrawal."

The PBGC estimates the reporting burden under the regulation on the assumption that there is one "mass

withdrawal" and one "substantial withdrawal" each year. (Such events actually occur less often.) The estimated reporting burden for each "mass withdrawal" is: 40 minutes for a notice of mass withdrawal to the PBGC; 30 minutes each for two certifications to the PBGC regarding determination and assessment of liability; 8 hours and 40 minutes for notices of mass withdrawal to employers; and 8 hours and 50 minutes for two notices of withdrawal liability to employers. The estimated reporting burden for each "substantial withdrawal" is: 1 hour for a combined notice and certification to the PBGC; 8 hours and 40 minutes for notices of withdrawal to employers; and 8 hours and 50 minutes for notices of liability to employers. Accordingly, the estimated total annual burden of reporting under the regulation is 46 hours and 30 minutes.

Issued at Washington, D.C., this 28th day of August 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95-21687 Filed 8-30-95; 8:45 am]

BILLING CODE 7708-01-M

Request for Extension of Approval Under the Paperwork Reduction Act; Collection of Information Under 29 CFR Part 2674, Notice of Insolvency

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: This notice advises the public that the Pension Benefit Guaranty Corporation has requested extension of approval by the Office of Management and Budget for a currently approved collection of information (1212-0033) contained in its regulation on Notice of Insolvency (29 CFR Part 2674). The collection of information involves notices that must be given by the plan sponsor of a multiemployer pension plan under certain adverse financial circumstances described in the regulation.

ADDRESSES: All written comments should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503. The request for extension will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 240, 1200 K Street, N.W., Washington, DC 20006, between

the hours of 9 a.m. and 4 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

Deborah C. Murphy, Attorney, Office of the General Counsel, Suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, N.W., Washington, DC 20006, 202-326-4024 (202-326-4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: This collection of information is contained in the Pension Benefit Guaranty Corporation's regulation on Notice of Insolvency (29 CFR part 2674).

Section 4245(e) of the Employee Retirement Income Security Act of 1974 requires that the sponsor of a multiemployer pension plan that is in reorganization notify the Secretary of the Treasury, the PBGC, and certain third parties (*i.e.*, contributing employers, employee organizations representing participants, and plan participants and beneficiaries) whenever the plan is or may become "insolvent" for a plan year (that is, unable to pay full benefits when due during that plan year). The plan sponsor must also notify the same parties of the level of benefits that will be paid during each insolvency year. Section 4245(e)(4) provides that these notices (except for the notices to the Secretary of the Treasury) are to be given in accordance with rules promulgated by the PBGC. The Notice of Insolvency regulation prescribes the contents of these notices, the manner in which they must be given, and the time limits for their issuance. The PBGC uses the information it receives to estimate cash needs for financial assistance to troubled plans.

The PBGC has requested extension of approval by the Office of Management and Budget for this collection of information (1212-0033). The PBGC estimates that an average of ten plans will be affected by this regulation each year and will spend an average of 31.15 hours each preparing the required notices. This amounts to an annual burden on the public of 311.5 hours.

Issued at Washington, DC, this 28th day of August 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95-21688 Filed 8-30-95; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-36154; File No. SR-NASD-95-34]

Self-Regulatory Organizations; Notice of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend for Four Months the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature

August 25, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on August 11, 1995, 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.

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

The NASD proposes to extend, until January 31, 1996, the effectiveness of certain rules governing the operation of The Nasdaq Stock Market, Inc.'s ("Nasdaq") Small Order Execution System ("SOES"). Specifically, these SOES rules, which were previously approved by the Commission on a pilot basis on December 23, 1993² and recently extended through October 2, 1995,³ provide for: (1) A reduction in the minimum exposure limit for unpreferred SOES orders from five times the maximum order size to two times the maximum order size, and for the elimination of exposure limits for preferred orders ("SOES Minimum Exposure Limit Rule"); and (2) implementation of an automated function for updating market maker quotations when the market maker's exposure limit has been exhausted ("SOES Automated Quotation Update Feature"). These rules are part of a set of SOES rules approved by the SEC on a pilot basis known as the Interim SOES Rules.⁴

¹ 15 U.S.C. 78s(b)(1) (1988).

² See Securities Exchange Act Release No. 33377 (December 23, 1993), 58 FR 69419 (December 30, 1993) ("Interim SOES Rules Approval Order").

³ See Securities Exchange Act Release No. 35535 (March 27, 1995), 60 FR 16690 (March 31, 1995) ("Interim SOES Rules Extension Order").

⁴ As first approved by the Commission on December 23, 1993, the Interim SOES Rules had four components: (1) the SOES Minimum Exposure

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 NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD 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

The Commission originally approved the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature on a one-year pilot basis in December 1993, along with two other SOES rules which have since lapsed.⁵ Since December 1993, the SEC has approved two NASD proposals to extend the effectiveness of the rules, with the most recent approval extending the rules through October 2, 1995.⁶ With this filing the NASD proposes to extend further the effectiveness of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature until January 31, 1996, so that the rules can continue on an uninterrupted basis until the SEC has had an opportunity to consider the NASD's proposed N-Aqcess system.⁷

As described in more detail below, because the NASD believes implementation of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature have been associated with positive developments in the markets for Nasdaq securities and clearly have not had any negative effects on market quality, the NASD believes it is appropriate and consistent with the maintenance of fair and orderly markets and the protection of investors for the Commission to

Limit; (2) the Automated Quotation Update; (3) a reduction in the maximum size order eligible for execution through SOES from 1,000 shares to 500 shares ("SOES Maximum Order Size"); and (4) the prohibition of short sales through SOES. The SOES Maximum Order Size Rule lapsed effective March 28, 1995 and the rule prohibiting the execution of short sales through SOES lapsed effective January 26, 1995.

⁵ See Interim SOES Rules Approval Order, *supra* note 1.

⁶ See Interim SOES Rules Extension Order, *supra* note 2, and Securities Exchange Act Release No. 35275 (Jan. 25, 1995), 60 FR 6327 (Feb. 1, 1995).

⁷ See Special NASD Notice to Members 95-60 (July 27, 1995).

approve a further limited extension of the effectiveness of these rules. The SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature reflect a reasoned approach by the NASD to address the adverse effects on market liquidity attributable to active intraday trading activity through SOES, while at the same time not compromising the ability of small, retail investors to receive immediate executions through SOES. Specifically, these rules are designed to address concerns that concentrated, aggressive use of SOES by a growing number of order entry firms has resulted in increased volatility in quotations and transaction prices, wider spreads, and the loss of liquidity for individual and institutional investor orders.

The NASD believes that the arguments and justifications made by the NASD in support of approval of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature and two extensions of these rules are just as compelling today as they were when the SEC relied on them to initially approve the rules. In sum, the NASD continues to believe that concentrated bursts of SOES activity by active order-entry firms contribute to increased short-term volatility, wider spreads, and less market liquidity on Nasdaq and that the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature are an effective means to minimize these adverse market impacts. In addition, given the increased utilization of SOES since the SOES Maximum Order Size Rule lapsed at the end of March 1995, the NASD believes it is even more imperative that the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature remain in effect to help to ensure the integrity of the Nasdaq market and prevent waves of SOES orders from a handful of SOES order-entry firms from degrading market liquidity and contributing to excessive short-term market volatility. The NASD notes that the SEC made specific findings in the Interim SOES Rules Approval Order that the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature were consistent with the Act. In particular, the SEC stated in its approval order that:

a. Because the benefits for market quality of restricting SOES usage outweigh any potential decrease in pricing efficiency, the Commission concludes that the net effect of the proposal is to remove impediments to the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that the proposed rule changes are designed to

produce accurate quotations, consistent with Sections 15A(b)(6) and 15A(b)(11) of the Act. In addition, the Commission concludes that the benefits of the proposal in terms of preserving market quality and preserving the operational efficiencies of SOES for the processing of small size retail orders outweigh any potential burden on competition or costs to customers or broker-dealers affected adversely by the proposal. Thus, the Commission concludes that the proposal is consistent with Section 15A(b)(9) of the Act in that it does not impose a burden on competition which is not necessary or appropriate in furtherance of the purposes of the Act.⁸

b. The Commission also concludes that the proposal advances the objectives of Section 11A of the Act. Section 11A provides that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure economically efficient execution of securities, transactions, fair competition among market participants, and the practicality of brokers executing orders in the best market. The Commission concludes that the proposal furthers these objectives by preserving the operational efficiencies of SOES for the processing of small orders from retail investors.⁹

c. The Commission believes that it is appropriate to restrict trading practices through SOES that impose excessive risks and costs on market makers and jeopardize market quality, and which do not provide significant contributions to liquidity or pricing efficiency. * * * The Commission believes that it is more important to ensure that investors seeking to establish or liquidate an inventory position have ready access to a liquid Nasdaq market and SOES than to protect the ability of customers to use SOES for intra-day trading strategies.¹⁰

d. The Commission believes that there are increased costs associated with active intra-day trading activity through SOES that undermine Nasdaq market quality. * * * Active intra-day trading activity through SOES can also contribute to instability in the market.¹¹

e. In addition, these waves of executions can make it difficult to maintain orderly markets. Given the increased volatility associated with these waves of intra-day trading activity, market makers are subject to increased risks that concentrated waves of orders will cause the market to move away. As a result, individual market makers may be unwilling to narrow the current spread and commit additional capital to the market by raising the bid or lowering the offer. When market makers commit less capital and quote less competitive markets, prices can be expected to deteriorate more rapidly. Accordingly, the Commission believes that it is appropriate for the NASD to take measured steps to redress the economic incentives for frequent intra-day trading inherent in SOES to prevent SOES activity from having a

negative effect on market prices and volatility.¹²

f. The Commission does not believe that intra-day trading strategies through SOES contribute significantly to market efficiency in the sense of causing prices to reflect information more accurately.¹³

g. The Commission has evaluated each of the proposed modifications to SOES, and concludes that each of the modifications reduces the adverse effects of active trading through SOES and better enables market makers to manage risk while maintaining continuous participation in SOES. In addition, the Commission does not believe that any of the modifications will have a significant negative effect on market quality. To the extent that any of the modifications may result in a potential loss of liquidity for small investor orders, the Commission believes that these reductions are marginal and are outweighed by the benefits of preserving market maker participation in SOES and increasing the quality of executions for public and institutional orders as a result of the modifications.¹⁴

h. The Commission * * * has determined that the instant modifications to SOES further objectives of investor protection and fair and orderly markets, and that these goals, on balance, outweigh any marginal effects on liquidity for small retail orders, and any anti-competitive effects on order entry firms and their customers. The Commission concludes that the ability of active traders to place trades through a system designed for retail investors can impair market efficiency and jeopardize the level of market making capital devoted to Nasdaq issues. The Commission believes that the rule change is an appropriate response to active trading through SOES, and that the modifications will reduce the effects of concentrated intra-day SOES activity on the market.¹⁵

The NASD believes these significant statutory findings by the SEC regarding the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature and the SEC's assessment of the likely benefits to the marketplace that would result from the rules have been confirmed and substantiated by econometric studies on the effectiveness of the Interim SOES Rules conducted by the NASD's Economic Research Department¹⁶ and an independent economist commissioned by the NASD.¹⁷ When the SEC approved the Interim SOES Rules, it stated that "[a]ny further action

the NASD seeks with respect to SOES—extension of these modifications upon expiration, or introduction of other changes—will require independent consideration under Section 19 of the Act."¹⁸ In addition, the SEC stated that, should the NASD desire to extend these SOES changes or modify SOES, the Commission would expect, "the NASD to monitor the quality of its markets and assess the effects of [the approved SOES] changes on market quality for Nasdaq securities." Also, if feasible, the SEC instructed the NASD to provide a quantitative and statistical assessment of the effects of the SOES changes on market quality; or, if an assessment is not feasible, the SEC stated that the NASD should provide a reasoned explanation supporting that determination.

In sum, the NASD's study found that:

- Since the SOES changes went into effect in January 1994, the statistical evidence indicated that when average daily volume, stock price, and stock price volatility are held constant through regression techniques, quoted percentage spreads in Nasdaq securities experienced a decline in the immediate period following implementation of the changes and have continued to decline since then. The statistical evidence also showed that the narrowing of quoted percentage spreads became more pronounced and robust the longer the Interim SOES Rules were in effect. In particular, quoted spreads in cents per share for the 500 largest Nasdaq National Market securities experienced a sharp decline from April 28 to May 12 and from June 23 to July 18;¹⁹

- With the exception of a brief, market-wide period of volatility experienced by stocks traded on Nasdaq, the New York Stock Exchange, and the American Stock Exchange during the Spring, the volatility of Nasdaq securities appears to be unchanged in the period following implementation of the changes; and

- A smaller percentage of Nasdaq stocks experienced extreme relative price volatility after implementation of the rules and that these modifications,

¹⁸ Interim SOES Rules Approval Order, *supra* note 1, 59 FR at 69429.

¹⁹ Some press reports have attributed the recent decline in spreads for Nasdaq stocks to the publication, on May 26 and 27, 1994, of newspaper articles in *The Wall Street Journal*, *The Los Angeles Times* and other publications reporting the results of an economic study conducted by two academicians that illustrated the lack of odd-eighth quotes for active Nasdaq stocks. Contrary to these press reports, this study shows that spreads had indeed narrowed before publication of these articles (from April 28 to May 12), stabilized at these narrower levels from mid-May until June 23, and declined again from June 23 to July 18.

¹² *Id.* at 69425–26.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 69429.

¹⁶ See letter from Gene Finn, Vice President & Chief Economist, NASD, to Katherine England, Assistant Director, National Market System & OTC Regulation, SEC, dated October 24, 1994 (letter submitted in connection with the NASD's N-PROVE filing, SR-NASD-94-13).

¹⁷ See *The Association Between the Interim SOES Rules and Nasdaq Market Quality*, Dean Furbush, Ph.D., Economists, Inc., Washington D.C., December 30, 1994 ("Furbush Study").

⁸ Interim SOES Rules Approval Order, *supra* note 1, 58 FR at 69423.

⁹ *Id.*

¹⁰ *Id.* at 69424–25.

¹¹ *Id.*

in turn, suggest a reduction in relative volatilities since the rules were put into effect.

The Furbush Study found that there was a statistically significant improvement in effective spreads for the top 100 Nasdaq stocks (based on dollar volume) during the three month period following implementation of the rules. Moreover, the study also found that the most significant improvement in effective spreads for the top 100 stocks occurred for trade sizes between 501 and 1,000 shares, precisely the level that was made ineligible for SOES trading by the Interim SOES Rules. In addition, the study found that the average number of market makers for the top ten Nasdaq-listed stocks increased from 44.3 to 46.0, or 3.8 percent, and from 30.2 to 30.9 for the top 100 stocks, or 2.3 percent. Although correlation does not necessarily imply causation, as noted by the SEC when it approved the Interim SOES Rules, the NASD believes that positive market developments clearly have been associated with implementation of the Interim SOES Rules.

The NASD also believes that these studies of the effectiveness of the Interim SOES Rules lend credence to another NASD study that was submitted to the SEC in support of approval of the Interim SOES Rules.²⁰ In the May 1993 SOES Study, the NASD found that concentrated waves of orders entered into SOES by active order-entry firms resulted in discernible degradation to the quality of the Nasdaq market. Specifically, the study found, among other things, that: (1) Bursts of orders entered into SOES by active order entry firms frequently result in a decline in the bid price and a widening of the bid-ask spread; (2) that there is a significant positive relationship between increases in spreads and volume attributable to active order-entry firms as it related to total SOES volume per security; and (3) activity by active order-entry firms resulted in higher price volatility and less liquidity—higher price changes are associated with high active trading firm volume, even after controlling for normal price fluctuations.

The NASD also believes market activity since the SOES Maximum Order Size Rule lapsed on March 28, 1995, provides further support for the effectiveness of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature

²⁰ See NASD Department of Economic Research: Impact of SOES Active Trading Firms on Nasdaq Market Quality (May 12, 1993) ("May 1993 SOES Study"). See also Securities Exchange Act Release No. 32313 (May 17, 1993), 58 FR 29647 (publication of the study for comment).

and the NASD's economic rationale for these rules. In particular, an analysis prepared by the NASD's Economic Research Department clearly illustrates that there has been a dramatic increase in SOES volume since the SOES Maximum Order Size Rule lapsed and that many market maker positions have been abandoned. These two phenomena appear to be linked. Those Nasdaq stocks that have experienced the greatest decline in the number of market makers are the ones that have experienced the greatest increase in SOES volume since the rule lapsed.²¹ The NASD believes these figures indicate that the relaxation of one of the Interim SOES Rules may have contributed to some of the adverse market developments that the NASD was seeking to avoid through implementation of the Interim SOES Rules (e.g., degradation in market maker participation and market liquidity).²² Accordingly, the NASD believes that any further relaxation of the Interim SOES Rules by permitting the SOES Minimum Exposure Limit Rule or the SOES Automated Quotation Update Feature to lapse would further harm the Nasdaq market. In light of the significance of these figures and their indicated adverse ramifications upon the Nasdaq market, the NASD also believes that SEC reconsideration of its position with respect to the entry of 1,000-share orders into SOES is warranted.

In addition, the Interim SOES Rules Extension Order, an order approving a proposal identical to the NASD's instant proposal, the SEC found that the continued effectiveness of the SOES Minimum Exposure Limit Rule "provides customers fair access to the Nasdaq market and reasonable assurance of timely executions."²³ With respect to the SOES Automated Quotation Update Feature, the SEC also stated that it believes "that extending the automated update feature is consistent with the Firm Quote Rule. The update function provides market makers the opportunity to update automatically their quotations after executions through SOES; under the Commission's Firm Quote Rule, market makers are entitled to update their

²¹ See Letter from Richard G. Ketchum, Executive Vice President & Chief Operating Officer, NASD, to Brandon Becker, Director, Division of Market Regulation, SEC, dated August 1, 1995 (copy attached as Exhibit 2 to this filing).

²² The NASD believes that elimination of the ban against short sales through SOES did not have a dramatic negative market effect because the NASD's short sale rule was approved during the time that the ban was in effect.

²³ Interim SOES Rules Extension Order, *supra* note 2, 60 FR at 16692.

quotations following an execution and prior to accepting a second order at their published quotes."²⁴

Therefore, in light of the above-cited statutory findings made by the SEC when it first approved the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature and extensions of these rules, coupled with the NASD's findings that these rules have been associated with positive market developments in terms of lower spreads on Nasdaq and less stocks with extreme relative price volatility, the NASD believes it would be consistent with the Act for the Commission to extend the effectiveness of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature for a four-month period. Moreover, even if the Commission is unwilling to find positive significance in the NASD's statistical analyses, at the very least, these studies indicate that the market has not been harmed by implementation of these rules.²⁵

The NASD believes that the proposed rule change is consistent with Sections 15A(b)(6), 15A(b)(9), 15A(b)(11) and 11A(a)(1)(C) of the Act. Among other things, 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, 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. Specifically, the NASD is proposing to extend the effectiveness of the SOES

²⁴ *Id.* (footnotes omitted).

²⁵ Even if the Commission concludes that the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature have had no impact on market quality, the NASD believes the Commission's approval of New York Stock Exchange ("NYSE") Rule 80A on a permanent basis illustrates that the Commission would still have a sufficient basis to approve an extension of the rules for a four-month period. In particular, the SEC's discussion of the statutory basis for approval of NYSE Rule 80A focused in large part on the fact that Rule 80A did not have any adverse impacts on market quality on the NYSE and that, as a result, the NYSE should be given the latitude to take reasonable steps to address excessive volatility in its marketplace. See Securities Exchange Act Release No. 29854 (October 24, 1994), 56 FR 55963 (October 30, 1994). Accordingly, the NASD believes the SEC should afford the NASD the same regulatory flexibility that it afforded the NYSE to implement rules reasonably designed to enhance the quality of Nasdaq and minimize the effects of potentially disruptive trading practices.

Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature for four months because of concerns that concentrated, aggressive use of SOES by a growing number of order entry firms has resulted in increased volatility in quotations and transaction prices, wider spreads, and the loss of liquidity for individual and institutional investor orders, all to the detriment of public investors and the public interest. The NASD believes the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature have operated to rectify this situation while continuing to provide an effective opportunity for the prompt, reliable execution of small orders received from the investing public. Accordingly, in order to protect investors and the public interest, the NASD believes the SEC should approve an additional four-month extension of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature through January 31, 1996, so that small investors' orders will continue to receive the fair and efficient executions that SOES was designed to provide.

Section 15A(b)(9) provides that the rules of the Association may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature apply across the board and do not target any particular user or participant, as all dealers may set their exposure limits at two times the tier size and all dealers may elect to utilize the automated quote update feature. Accordingly, the NASD believes that these rule changes are not anti-competitive, as they are uniform in application and they seek to preserve the ability of SOES to provide fair and efficient automated executions for small investor orders, while preserving market maker participation in SOES and market liquidity.

Section 15A(b)(11) empowers the NASD to adopt rules governing the form and content of quotations relating to securities in the Nasdaq market. Such rules must be designed to produce fair and informative quotations, prevent fictitious and misleading quotations and promote orderly procedures for collecting and distributing quotations. The NASD is seeking to continue the effectiveness of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature so that SOES activity may not result in misleading quotations in the Nasdaq market. Market makers place quotes in the Nasdaq system and these quotes

comprise the inside market and define the execution parameters of SOES. When volatility in the SOES environment causes market makers to widen spreads or to change quotes in anticipation of waves of SOES orders, quotes in the Nasdaq market become more volatile and may be misleading to the investing public. Accordingly, absent continuation of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature, the quotations published by Nasdaq may not reflect the true market in a security and, as a result, there may be short-term volatility and loss of liquidity in Nasdaq securities, to the detriment of the investing public. Further, the continuation of the automated refresh feature will ensure that a market maker's quotation is updated after an exposure limit is exhausted. Uninterrupted use of this function will maintain continuous quotations in Nasdaq as market makers exhausting their exposure limits in SOES will not be subject to a "closed quote" condition or an unexcused withdrawal from the market. Finally, the NASD believes that the proposed rule change is consistent with significant national market system objectives contained in Section 11A(a)(1)(C) of the Act. This provision states it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure, among other things, (i) economically efficient execution of securities transactions; (ii) fair competition among brokers and dealers; and (iii) the practicality of brokers executing investor orders in the best market. Specifically, the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature advance each of these objectives by preserving the operational efficiencies of SOES for the processing of small investors' orders, by maintaining current levels of market maker participation through reduced financial exposure from unpreferred orders, and by reducing price volatility and the widening of market makers' spreads in response to the practices of order entry firms active in SOES.

In addition, for the same reasons provided by the SEC when it approved the Interim SOES Rules that are cited above in the text accompanying footnotes 6 through 13, the NASD believes that the proposed rule change is consistent with Sections 15A(b)(6), 15A(b)(9), 15A(b)(11) and 11A(a)(1)(C) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in 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

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

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. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File Number SR-NASD-95-34 and should be submitted by September 21, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁶

²⁶ 17 CFR 200.30-3(a)(12) (1994).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-21623 Filed 8-30-95; 8:45 am]

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[Release No. 34-36153; File No. SR-NASD-95-36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Schedule B to the NASD By-Laws

August 25, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 22, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") 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.

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

The NASD is proposing to amend Schedule B to the NASD By-Laws¹ to delete information text on the number of members of the NASD Board of Governors ("Board") elected from each district. Below is the text of the proposed rule change. Proposed deletions are in brackets.

Schedules to the By-Laws

Schedule B

The number and territorial boundaries of the several districts established as provided in Section 1 of Article VIII [and the number of Governors elected from the several districts established as provided in Section 4(b) of Article VII of the By-Laws of the Corporation] are as follows:

District No. 1 State of Hawaii; in the State of California, the Counties of Monterey, San Benito, Fresno and Inyo, and the remainder of the State North or West of such Counties; and in the State of Nevada, the Counties of Esmeralda and Nye, and the remainder of the State North or West of such Counties.

[One Governor shall be elected from and by the members of the Corporation eligible to vote in District No. 1.]

District No. 2 In the State of California, that part of the State South

or East of the Counties of Monterey, San Benito, Fresno and Inyo; and, in the State of Nevada, that part of the State South or East of the Counties of Esmeralda and Nye, and all Pacific possessions and territories of the United States.

[One Governor shall be elected from and by the members of the Corporation eligible to vote in District No 2.]

District No. 3 States of Alaska, Arizona, Colorado, Idaho, Montana, New Mexico, Oregon, Utah, Washington and Wyoming.

[One Governor shall be elected from and by the members of the Corporation eligible to vote in District No. 3.]

District No. 4 States of Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota and South Dakota.

[One Governor shall be elected from and by the members of the Corporation eligible to vote in District No. 4.]

District No. 5 States of Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Oklahoma and Tennessee.

[One Governor shall be elected from and by the members of the Corporation eligible to vote in District No. 5.]

District No. 6 State of Texas.

[One Governor shall be elected from and by the members of the Corporation eligible to vote in District No. 6.]

District No. 7 States of Florida, Georgia, North Carolina, and South Carolina, Puerto Rico, Canal Zone and the Virgin Islands.

[Two Governors shall be elected from and by the members of the Corporation eligible to vote in District No. 7.]

District No. 8 States of Illinois, Indiana, Michigan, Ohio and Wisconsin, and, in the State of New York, the Counties of Monroe, Livingston and Steuben, and the remainder of the State West of such Counties.

[Two Governors shall be elected from and by the members of the Corporation eligible to vote in District No. 8.]

District No. 9 The District of Columbia, and the States of Delaware, Maryland, Pennsylvania, Virginia and West Virginia, and, in the State of New Jersey, the Counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean and Salem.

[One Governor shall be elected from and by the members of the Corporation eligible to vote in District No. 9.]

District No. 10 In the State of New York, the Counties of Nassau, Orange, Putnam, Rockland, Suffolk, Westchester, and the five Boroughs of New York City, and the State of New

Jersey (except for the Counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean and Salem).

[Three Governors shall be elected from and by the members of the Corporation eligible to vote in District No. 10.]

District No. 11 States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont and New York (except for the Counties of Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester; the Counties of Monroe, Livingston and Steuben, and the remainder of the State West of such Counties; and the five Boroughs of New York City).

[One Governor shall be elected from and by the members of the Corporation eligible to vote in District No. 11.]

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 NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD 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

(a) Schedule B to the NASD By-Laws includes information on the boundaries of each district office of the NASD and on the number of members of the Board elected from each district. The NASD is proposing to amend Schedule B to the NASD By-Laws to delete provisions that specify the number of members of the Board currently approved to be elected from each district. The inclusion of the text regarding district representation on the Board in Schedule B to the NASD By-Laws was intended to be informational only. The operative rule with respect to the election of district representatives to the Board, however, is Article VII, Section 4(b) of the By-Laws which requires that each district shall elect one Board member, authorizes the Board to determine which districts, if any, shall elect more than one Governor, and—in general—authorizes the Board to make appropriate changes in the number or boundaries of the districts or the number of Governors elected by each district to provide fair

¹ NASD Manual, Schedules to the By-Laws, Schedule B (CCH) ¶ 1772.