

provides uniform treatment to index, currency and currency index warrants and should aid the Exchange's surveillance procedures. Accordingly, the Commission believes it is appropriate to approve Amendment No. 3 on an accelerated basis.

Amendment No. 4 deletes a transaction reporting requirement which will be revised and incorporated into the Exchange's surveillance procedures and also makes other minor changes. As such, the Commission does not believe the Amendment raises any new or unique regulatory issues. Second, the Amendment clarifies that the applicable margin level for currency index warrants will be a percentage as specified by the exchange and approved by the Commission. The Commission notes that this revision is consistent with the treatment afforded currency index options, where margin levels are established on a case by case basis. Accordingly, the Commission believes it is appropriate to approve Amendment No. 4 on an accelerated basis.

Amendment No. 5 clarifies the settlement procedures for index warrants which are exercised prior to expiration. Specifically, the Amendment clarifies that a.m. settlement will be required on valuation date as well as during the last two business days prior to an index warrant's valuation date. As discussed above, the Commission believes that the use of a.m. settlement during this period will help to ameliorate any potential price effects associated with expirations of derivative index products. Accordingly, the Commission believes it is appropriate to approve Amendment No. 5 on an accelerated basis.

Therefore, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendments No. 1, 2, 3, 4 and 5 to the CBOE's proposal on an accelerated basis.

## VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendments No. 1, 2, 3, 4 and 5. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 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 Section, 450 Fifth Street, N.W., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 28, 1995.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,<sup>52</sup> that the proposed rule change (SR-CBOE-94-34) is approved, as amended, with the portion of the rule change relating to spread margin treatment being approved on a one year pilot program basis, ending August 29, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>53</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-22108 Filed 9-6-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-36171; File No. SR-NASD-55-35]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Date of Implementation of the NASD's Primary Market Maker Standards and the Duration of the Pilot Program for the NASD's Short Sale Rule

August 30, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on August 24, 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. As discussed below, the Commission has also granted accelerated approval of the proposal.

<sup>52</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>53</sup> 17 CFR 200.30-3(a)(12) (1994).

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

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

Pursuant to Section 19(b)(1) of the Act, the NASD is proposing to delay, from September 6, 1995 to December 1, 1995, the implementation date of the Primary Market Maker standards to be used to determine the eligibility of market makers to an exemption from the NASD's short-sale rule. The NASD also proposes to extend the termination date for the pilot period to June 3, 1996 instead of March 5, 1996. The text of the proposed rule change is as follows (additions are underlined; deletions are bracketed).

### RULES OF FAIR PRACTICE

#### ARTICLE III

##### Short Sale Rule

##### Sec. 48

\* \* \* \* \*

(1)(3) *Until December 1, 1995,* t[T]he term "qualified market maker [.]" [for a period of one year after the effective date of this section,] shall mean a registered Nasdaq market maker that has maintained, without interruption, quotations in the subject security for the preceding 20 business days.

\* \* \* \* \*

For purposes of this subsection, a market maker will be deemed to have maintained quotations without interruption if the market maker is registered in the security and has continued publication of quotations in the security through the Nasdaq system on a continuous basis; provided however, that if a market maker is granted an excused withdrawal pursuant to the requirements of Part VI, Schedule D to the By-Laws, the 20 business day standard will be considered uninterrupted and will be calculated without regard to the period of the excused withdrawal. *Beginning December 1, 1995,* [One year after effectiveness of this section,] the term "qualified market maker" shall mean a registered Nasdaq market maker that meets the criteria for a Primary Nasdaq Market Maker as set forth in Article III, Section 49 of the Rules of Fair Practice.

\* \* \* \* \*

(m) This section shall be in effect until *June 3, 1996* [March 6, 1996].

## 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*

On June 29, 1994, the SEC approved the NASD's short-sale rule applicable to short sales in Nasdaq National Market securities on an eighteen-month pilot basis through March 5, 1996.<sup>2</sup> The NASD's short-sale rule prohibits member firms from effecting short sales at or below the current inside bid as disseminated by the Nasdaq system whenever that bid is lower than the previous inside bid.<sup>3</sup> The rule is in effect during normal domestic market hours (9:30 a.m. to 4:00 p.m., Eastern Time). As approved by the Commission, during the first year that the rule is in effect (*i.e.*, September 6, 1994 through September 5, 1995), Nasdaq market makers who maintain a quotation in a particular Nasdaq National Market security for 20 consecutive business days without interruption are exempt from the rule for short sales in that security, provided that the short sales are made in connection with bona fide market making activity (the "20-day" test). For the next six months of the 18-month pilot period (*i.e.*, September 6, 1995 through March 5, 1996), the "20-day" test for market maker exemption from the rule was scheduled to be replaced with a four-part quantitative test known as the Primary Market Maker ("PMM") Standards.

Under the PMM standards, to be eligible for an exemption from the short-sale rule, a market maker must satisfy at least two of the following four criteria: (1) The market maker must be at the best bid or best offer as shown on the Nasdaq system no less than 35 percent of the time; (2) the market maker must maintain a spread no greater than 102 percent of the average dealer spread; (3) no more than 50 percent of the market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading; or (4) the market maker executes 1½ times its "proportionate" volume in

stock.<sup>4</sup> If a market maker is a PMM for a particular stock, there will be a "P" indicator next to its quote in that stock. In addition, market makers will be able to review their status as PMMs through their Nasdaq Workstation. The review period for satisfaction of the PMM performance standards is one calendar month. If a PMM has not satisfied the threshold standards after a particular review period, the PMM designation will be removed commencing on the next business day following notice of failure to comply with the standards. Market makers may requalify for designation as a PMM by satisfying the threshold standards for the next review period.

Because of unforeseen delays in the programming of the PMM standards, however, the NASD is proposing that the effective date of the PMM standards be delayed until December 1, 1995. With the proposed delay, a market maker's trading activity during the month of November will be evaluated according to the PMM standards to determine if it can retain its exemption for December 1995. Until November 30th, the 20-day test will continue to be used to evaluate market makers' eligibility for an exemption from the rule. Thus, after December 1, 1995, a "P" indicator will be delayed next to every PMM that is exempt from the rule according to the new PMM standards.

Because implementation of the PMM standards will be delayed under the proposal, the NASD is also proposing to extend the pilot period for the rule so that there is sufficient time to evaluate the effectiveness and impact of the PMM standards and the effectiveness of the short sale rule with the PMM standards in place. Specifically, the NASD proposes to extend the termination date for the pilot program until June 3, 1996.

The NASD believes the proposed rule change is consistent with Sections 15A(b)(6) and 11A(c)(1)(F) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and

facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. Section 11A(c)(1)(F) assures equal regulation of all markets for qualified securities and all exchange members, brokers, and dealers effecting transactions in such securities. Specifically, the NASD believes that continuing the operation of the present "20-day" test until the PMM standards are in place will ensure that the liquidity provided to the market by virtue of the market maker exemption will not be diminished. In addition, the NASD believes that continuation of the "20-day" test until the PMM standards are in place would avoid the confusion in the marketplace that would result if the market maker exemption were to lapse for two months and then be reinstated. Finally, the NASD believes that extending the pilot period for the short-sale rule will enhance the quality of studies analyzing the effectiveness of the rule and help to ensure that future regulatory action taken with respect to the rule is based on a greater knowledge and understanding of the rule.

*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 self-regulatory organization consents, the Commission will:

A. By order approved such propose rule change, or

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

The NASD has requested, however, that the Commission find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**.

<sup>2</sup> See Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994) ("Original Approval Order").

<sup>3</sup> A short sale is a sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.

<sup>4</sup> Specifically, the proportionate volume test requires a market maker to account for volume of at least one-and-a-half times its proportionate share of overall volume in the security for the review period. For example, if a security has 10 market makers, each has a proportionate share of 10 percent. Therefore, the proportionate share volume is one-and-a-half times 10, or 15 percent of overall volume.

As discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act. Further, the Commission finds good cause for approving the proposal prior to the 30th day after the date of publication of notice of filing in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate in that it will permit the NASD to provide interested persons adequate notice that implementation of the PMM standards will be delayed until December 1, 1995 and that the expiration of the short sale rule, including the PMM standards, will be extended until June 3, 1996.

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

As discussed in the Original Approval Order, the Commission believed and continues to believe that the imposition for a limited time of a short sale rule and accompanying PMM standards applicable to Nasdaq National Market securities is consistent with the requirements of Sections 15A(b)(6), 15A(b)(9) and 15A(b)(11) of the Act.<sup>5</sup> As discussed below, the Commission believes that delayed implementation of the PMM standards until December 1, 1995 and limited extension of the short sale rule until June 3, 1996 (rather than March 6, 1996) is consistent with the Act and the rules and regulations promulgated thereunder.<sup>6</sup>

Maintaining the current operation of the short sale rule until the NASD has completed and tested the systems necessary to provide market participants adequate notice of a market maker's PPM status will avoid confusion in the marketplace and assure consistency in the application of NASD rules. Moreover, extension of the short sale rule until June 3, 1996 will maintain the

effectiveness of the PMM standards for six months, as envisioned by the Commission's Original Approval Order. As noted in the Original Approval Order, this will provide the Commission and the NASD the opportunity to study the effects of the rule and its exemptions and to determine whether these are practicable and necessary on an ongoing basis, or whether other alternatives would be more appropriate.

#### V. 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 the file number in the caption above and should be submitted by September 28, 1995.

#### VI. Conclusion

For the reasons stated above, the Commission believes the rule change is consistent with the Act and, therefore, has determined to approve it.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the rule change SR-NASD-95-35 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-22105 Filed 9-6-95; 8:45 am]

**BILLING CODE 8010-01-M**

[Release No. 34-36165; File No. SR-NYSE-94-41]

#### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change Relating to the Establishment of Uniform Listing and Trading Guidelines for Stock Index, Currency and Currency Index Warrants

August 29, 1995.

#### I. Introduction

On November 9, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) ("Section 19(b)") of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to establish uniform rules for the listing and trading of stock index ("index" or "stock index"), currency ("currency") and currency index ("currency index") warrants (collectively "warrants"). Notice of the proposed rule change appeared in the **Federal Register** on December 20, 1994.<sup>3</sup> One comment letter was received in response to the proposal.<sup>4</sup>

The Exchange subsequently filed Amendment No. 1 ("Amendment No. 1") to the proposal on August 25, 1995. Amendment No. 1 proposes to amend the filing in order to respond to the Comment Letter, the Commission's comments and to conform certain of the Exchange's proposed rules and policies to those filed by other securities markets. This order approves the proposal, as amended.

#### II. Description of the Proposal

The NYSE proposes to establish uniform rules for the listing and trading of stock index, currency and currency index warrants.<sup>5</sup> Paragraphs 703.15 (Foreign Currency Warrants and Currency Index Warrants) and 703.17 (Stock Index Warrants Listing Standards) of the *Listed Company Manual* would be amended to provide uniform listing criteria for index,

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988 & Supp. V 1993).

<sup>2</sup> 17 CFR § 240.19b-4 (1994).

<sup>3</sup> See Securities Exchange Act Release No. 35095 (Dec. 12, 1994), 59 FR 65552.

<sup>4</sup> See Letter from Paul M. Gottlieb, Seward & Kissell, to Jonathan G. Katz, Secretary, Commission, dated January 10, 1995 ("Comment Letter" or "Seward & Kissell Letter").

<sup>5</sup> The proposed rules would apply to both American-style warrants (which may be exercised at any time prior to expiration) and European-style warrants (which may only be exercised during a specified period before expiration).

<sup>5</sup> 15 U.S.C. 78o-3(b) (6), (9) and (11). Section 15A(b)(6) requires among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. 15 U.S.C. § 78o-3(b)(6). Sections 15A(b) (9) and (11) require that the NASD's rule be designed not to impose any burden on competition not necessary or appropriate in furtherance of the Act, *id.* § 78o-3(b)(9), and to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing and publishing quotations. *Id.* § 78o-3(b)(11). In addition, the Commission believes that the rule change will further the goals of Section 11A in that it will promote efficient and effective market operations and economically efficient execution of investor orders in the best market and assure fair competition between the exchange markets and the OTC market and among brokers and dealers. *Id.* § 78k-1(a)(1)(C).

<sup>6</sup> Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994).

<sup>7</sup> 17 CFR 200.30-3(a)(12) (1989).