

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 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 October 13, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁶ that the amended proposed rule change (File No. SR-CBOE-95-22) is approved.

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

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-36245; File No. SR-NASD-95-38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Effective Date of an Amendment to the Prompt Receipt and Delivery of Securities Interpretation Concerning Affirmative Determinations Made in Connection with Short Sales

September 18, 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 September 6, 1995,¹ 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 the Substance of the Proposed Rule Change

The NASD is proposing to change the effective date of a rule change previously approved by the Commission regarding an amendment to the NASD's Prompt Receipt and Delivery of Securities ("Interpretation") issued by the NASD Board of Governors under Article III, Section 1 of the NASD Rules of Fair Practice that deals with affirmative determinations made by members in connection with short sales.² Specifically, the NASD proposes to delay, until February 20, 1996, the effectiveness of the portion of the rule change that prohibits NASD members from using blanket or standing assurances that securities are available for borrowing to satisfy their affirmative determination requirements. An affirmative determination as to stock availability and annotation of that affirmative determination must still be made for each and every transaction, however. Thus, a firm that relies on a fax sheet or other standing assurance as to stock availability must annotate such reliance for each short sale transaction.

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.

requirements imposed on NASD members with respect to the annotation requirement. The amendment is available for copying in the Commission's Public Reference Room.

² NASD Manual, Rules of Fair Practice, Article III, Sec. 1, (CCH) ¶ 2151.04.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On September 12, 1994, the SEC approved an NASD rule change (SR-NASD-94-32) that amended the Interpretation.³ Specifically, the new rule requires members to annotate, on the trade ticket or on some other record maintained for that purpose by the member firm, the following information:

1. If a customer assures delivery, the member must annotate that conversation noting the present location of the securities; whether the securities are in good deliverable form; and whether they will be delivered to the firm within time for settlement; or
2. If the member locates the stock, the member must annotate the identity of the individual and firm contacted who offered assurance that the shares would be delivered or were available for borrowing by settlement date; and the number of shares needed to cover the short sale.

The amendment also provided that the manner by which a member or person associated with a member annotates compliance with this "affirmative determination" requirement (e.g., marking the order ticket, recording inquiries in a log, etc.) is left for each individual firm to decide. In addition, the amendment clarified that an affirmative determination and annotation of that affirmative determination must be made for each and every transaction since a "blanket" or standing assurance that securities are available for borrowing is not acceptable to satisfy the affirmative determination requirement ("standing assurance provision"). Thus, by requiring firms to annotate each and every affirmative determination, the amendment made clear the NASD's policy that firms cannot rely on daily fax sheets of "borrowable stocks" to satisfy their affirmative determination requirements under the Interpretation.

In NASD Notice to Members 94-80, the NASD announced that the effective date of the amendments to the Interpretation would be November 30, 1994. Based upon feedback from a broad spectrum of NASD members that compliance with the amended Interpretation would not be possible by November 30, 1994, due to a variety of operational adjustments that needed to be made, the NASD decided to postpone the effective date of the amendments to the Interpretation until January 9, 1995,

³ See Securities and Exchange Act Release No. 34653 (September 12, 1994), 59 FR 47965 (September 19, 1994).

¹⁶ 15 U.S.C. § 78s(b)(2) (1982).

¹⁷ 17 CFR 200.30-3(a)(12) (1994).

¹ The proposed rule change was initially submitted on August 31, 1995, but was amended prior to publication in the Federal Register. The amendment was intended to clarify the

to give member firms sufficient time to prepare for the rule change.⁴

In addition, in light of the NASD's concern that the prohibition against the use of daily fax sheets and other "blanket" or standing assurances may have created an unnecessarily burdensome regulatory requirement of NASD members, the NASD decided to postpone the effective date of the standing assurance provision until August 1, 1995, to give the NASD the opportunity to determine whether to amend or delete the rule or let it go into effect as approved by the SEC.⁵ The effective date for the standing assurance provision was extended once more, until September 5, 1995.⁶ Because the NASD is still in the process of evaluating comments raised by market participants concerning the provision, the NASD is proposing to further postpone the effective date of the standing assurance provision until February 20, 1996.⁷

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires that the rules of the NASD, among other things, remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest, in that delaying the effective date of the standing assurance provision until February 20, 1996, will assist members in complying with the new rule. Similarly, the NASD believes that delaying the effective date of the standing assurance provision until February 20, 1996, will give the NASD and its members ample time to consider whether to retain this provision or modify it to better reflect industry practice, thereby avoiding member firm confusion and ensuring that NASD rules are crafted to achieve their regulatory goals in a manner that is the least burdensome for the membership.

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

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 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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act and paragraph (e) of Rule 19b-4 promulgated thereunder in that it changes the effective date of a new provision of the NASD's rules and is therefore a policy relating to the administration or enforcement (i.e., the effective date) of a new rule of the Association.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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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, NW., 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 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-95-38 and should be submitted by October 13, 1995.

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

Margaret H. McFarland,
Deputy Secretary.

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⁸ 17 CFR 200.30(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that will require submission to the Office of Management and Budget (OMB) for clearance in compliance with P.L. 96-511, as amended (P.L. 104-13 effective October 1, 1995). The Paperwork Reduction Act. Since the last list was published in the Federal Register on September 1, 1995, the following information collections have been proposed or will require extension of the current OMB approvals.

(Call the Reports Clearance Officer on (410) 965-4142 for a copy of the form(s) or package(s), or write to her at the address listed after the information collections.)

SSA Reports Clearance Officer:

Charlotte S. Whitenight.

1. Psychiatric Review Techniques—0960-0413. The information on form SSA-2506 is used by the Social Security Administration to evaluate the severity of mental impairments in adults who have filed a claim for disability benefits. The affected public consists of State Disability Determination Agencies who are responsible for reviewing the claim from beneficiaries/recipients and who report their findings to SSA.

Number of Respondents: 54.

Frequency of Response: 15,822 per State Agency.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 213,594 hours.

2. Questionnaire for Children Claiming SSI Benefits—0960-0499. The form SSA-3881 is used by the Social Security Administration to obtain information which is needed to evaluate disability in children claiming supplemental income payments. The respondents are such claimants whose alleged disability does not meet our medical listings.

Number of Respondents: 177,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 59,000 hours.

3. Annual Registration Statement Identifying Separated Participants with Deferred Benefits—0960-NEW. The information on form Schedule SSA is used by the Social Security Administration to provide beneficiaries information about their future pension benefits. The respondents are administrators of private pension plans.

⁴ See NASD Special Notice, dated November 29, 1994.

⁵ See Securities Exchange Act Release No. 35207 (January 10, 1995), 60 FR 3445 (January 17, 1995).

⁶ See NASD Special Notice, dated July 28, 1995.

⁷ Of course, if the standing assurance provision were to be modified or deleted prior to February 20, 1996, pursuant to a rule proposal approved by the Commission, the provision would not go into effect in its current form on February 20, 1996.