

III. Comments on the Operation of the Plan

In the January 1995 Extension Order, the August 1995 Extension Order, the September 1995 Extension Order, the October 1995 Extension Order, and the November 1995 Extension Order, the Commission solicited, among other things, comment on: (1) whether the BBO calculation for the relevant securities should be based on price and time only (as currently is the case) or if the calculation should include size of the quoted bid or offer; and (2) whether there is a need for an intermarket linkage for order routing and execution and an accompanying trade-through rule. The Commission continues to solicit comment on these matters.

IV. Solicitation of Comment

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 at the Commission's Public Reference Room. All submissions should refer to File No. S7-24-89 and should be submitted by January 10, 1996.

V. Conclusion

The Commission finds that proposed Amendment No. 6 to the Plan to extend the operation of the Plan and the financial negotiation period through December 29, 1995, is appropriate and in furtherance of Section 11A of the Act. The Commission finds further that extension of the exemptive relief through December 29, 1995, as described above, also is consistent with the Act and the Rules thereunder. Specifically, the Commission believes that these extensions should serve to provide the Participants with more time to conclude their financial negotiations and to submit the necessary filings to the Commission. This, in turn, should further the objects of the Act in general, and specifically those set forth in Section 12(f) and 11A of the Act and in

Rules 11Aa3-1 and 11Aa3-2 thereunder.

It is therefore ordered, pursuant to Sections 12(f) and 11A of the Act and (c)(2) of Rule 11Aa3-2 thereunder, that Amendment No. 6 to the Joint Transaction Reporting Plan for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis is hereby approved and trading pursuant to the Plan is hereby approved on a temporary basis through December 29, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(29).

Jonathan G. Katz,
Secretary.

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[Release No. 34-36587; File No. 600-28]

Self-Regulatory Organizations; ProTrade; Notice of Filing of Application for Exemption From Registration as a Clearing Agency

December 13, 1995.

On September 22, 1994, ProTrade¹ filed with the Securities and Exchange Commission ("Commission") a Form CA-1 requesting exemption from registration as a clearing agency pursuant to section 17A of the Securities Exchange Act of 1934 ("Exchange Act")² and Rule 17Ab2-1 thereunder.³ Since the original filing, ProTrade has supplemented the information provided in its Form CA-1 filing with letters dated October 27, 1994, April 18, 1995, September 26, 1995, and October 2, 1995. The Commission is publishing this notice to solicit comments on the proposal from interested persons.

I. Introduction

ProTrade proposes to introduce an automated proprietary trading system ("System") for over-the-counter option securities. ProTrade's customers, the users of the System, will be authorized to enter bids and offers for these options into the System. The System will electronically match the bids and offers and provide execution. Instantaneously with each execution, the proceeds of the transaction will be calculated, and the accounts of the trading parties will be debited and credited in settlement.

¹ ProTrade, located in Mercer Island, Washington, was incorporated under the laws of the State of Washington in January, 1986. Joseph A. Zajac, the company's President, owns 100% of ProTrade's stock.

² 15 U.S.C. 78q-1 (1988).

³ 17 CFR 240.17Ab2-1 (1995).

Accordingly, the System will combine into a single electronic format several functions that usually involve the collective efforts of: (1) An option broker-dealer, (2) an options exchange, and (3) an options clearing agency. ProTrade asserts that this unity of functions will bring new efficiencies to the options marketplace.

ProTrade has represented that its System will not commence operations before ProTrade: (1) has registered as a broker-dealer pursuant to the Exchange Act and has become a member of the National Association of Securities Dealers, Inc. ("NASD"),⁴ (2) has registered the option securities that are to be traded in the System pursuant to the Securities Act of 1933 ("Securities Act"),⁵ and (3) has received a no-action letter from the Division stating that the Division will not recommend enforcement action if ProTrade does not register as a securities exchange pursuant to the Exchange Act.⁶

ProTrade believes that its proposed operations would involve few, if any, clearing agency activities within the meaning of the Exchange Act. ProTrade also believes that its proposed registration as a broker-dealer, coupled with the proposed registration of its options under the Securities Act, will satisfy the regulatory scheme of the Exchange Act. ProTrade has stated that such registrations under both the Exchange Act and the Securities Act would provide the necessary and appropriate safeguards to protect investors and the public interest.⁷ Accordingly, it is ProTrade's belief that an exemption from registration as a

⁴ For the definitions of "broker" and "dealer" under the Exchange Act, see Sections 3(a) (4) and (5), 15 U.S.C. 78c(a) (4) and (5) (1988). See also, Section 15 of the Exchange Act, 15 U.S.C. 78o (1988), for broker-dealer registration requirements.

⁵ 15 U.S.C. 77b(1) (1988). ProTrade's options are "securities" as that term is defined in Section 2(1) of the Securities Act, 15 U.S.C. 77b(1) (1988). As securities, they must be registered pursuant to Sections 5 and 6 of the Securities Act, 15 U.S.C. 77e and 77f (1988), before they may be traded in interstate commerce.

The issuer of the options for purposes of the Securities Act will be ProTrade itself. For the definition of "issuer," see Section 2(4) of the Securities Act, 15 U.S.C. 77b(4) (1988).

⁶ For definition of "exchange," see Section 3(a)(1) of the Exchange Act, 15 U.S.C. 78c(a)(1) (1988). See also, Section 6 of the Exchange Act, 15 U.S.C. 78f (1988), for exchange registration requirements.

⁷ ProTrade expects to have a net capital of \$250,000, the amount that ProTrade states it will need to comply with Commission's uniform net capital rule, Rule 15c3-1, 17 CFR 240.15c3-1 (1995), as a broker-dealer that holds customers' funds (i.e., a clearing broker-dealer). The Commission has taken no position on ProTrade's interpretation of its requirements under the uniform net capital rule.

clearing agency under the Exchange Act is warranted.

II. Description of Proposal

A. The System

1. Background

ProTrade reports that it has designed and developed the System as a "stand-along" electronic operation that integrates order-entry, trade-matching, and execution functions with the back office functions of accounting and settlement. ProTrade states that it will interpose itself between the trading parties of each trade and that it will guarantee performance to each contraparty. The System will be made available to a list of qualified customers. As the operator of the System, ProTrade will derive revenues from customer fees on all transactions effected in the System.⁸

2. Options Securities

The System is designed to process over-the-counter options on equities, equity indexes, foreign currencies, and interest rates. ProTrade plans to have two classes, Class A and Class B, of such options. Class A options will be uncertificated, European-style put and call options that will be cash settled and that will expire on the last trading day of the chosen month of expiration.⁹ Class B options will be uncertificated put and call options that will have no standard terms and that will be individually negotiated by the trading parties.

3. Customers

As discussed below under Participation Standards, ProTrade will screen its prospective customers to determine whether they meet certain financial and operational standards.¹⁰ Applicants who fail to meet ProTrade's standards will be denied customer status and therefore will be denied access to the System.¹¹ In general, ProTrade expects to have a sophisticated customer base including professional investors and financial institutions. Each customer will be provided with the System's proprietary

⁸ ProTrade has stated that it "will derive most of its revenues from typical 'discount' broker activities, i.e., accepting orders for listed securities on behalf of customers." Letter from Joseph M. Zajac, President, ProTrade, to Eugene Lopez, Assistant Director, Division, Commission, at page 2 (October 15, 1993).

⁹ As European-style options, no positions may be exercised before the expiration date.

¹⁰ ProTrade has chosen the term "customers" for the users of its System, as distinct from participants, subscribers, members, or other similar terms.

¹¹ At this time, ProTrade has no written standards or criteria for acceptance of customers.

software, which the customer may use on a personal computer for the purpose of entering orders and for performing other tasks within the System. ProTrade expects that customers will be able to connect with the System either by: (1) a dial-up telephone line using a modem or (2) a leased line. ProTrade will provide each customer with a unique identification number and a password that will allow access to the System.

4. Operations

The System will keep a file of its customers' outstanding bids and offers sorted by price and time of receipt. The bids and offers will be displayed in a montage or array, and customers will be able to cancel or modify their orders at any time prior to execution. Bids and offers at the same price will be anonymously matched by the System and will be executed on a first-in, first-out basis. The System will accept market orders, limit orders, stop orders, and market if touched orders.

The System will be designed to calculate balances and to settle accounts immediately (or within a few seconds) after every execution. ProTrade states that each order will be individually processed by the System without netting.¹² Settlement will consist of book-entry debits or credits to the customer's account with the customer's account being part of ProTrade's segregated broker-dealer bank account. As a means of protection, the System is designed to reject any order unless the account of the customer that is entering the order has sufficient equity to satisfy the order's premium payment or has the required collateral.

B. System Safeguards

1. Participation Standards

Customers authorized by ProTrade to use the System will be required to meet initial and continuing financial and operational standards, as may be determined by the ProTrade Board of Directors and administered by ProTrade's management.¹³ Under these standards, customers will be screened for margin purposes to determine their

¹² Technically, this described form of post-trade processing is known as "trade-for-trade" clearing, the simplest form of clearing, which involves accounting for each trade on a contract by contract basis without netting or at least without the usual types of netting. This form of clearing contrasts with the more sophisticated forms of clearing such as "daily balance order" or "continuous net settlement" where clearing agencies net each of their participant's trades and each participant's money credits and debits in each security on a daily basis.

¹³ At this time, ProTrade has no financial and operational standards for customers authorized to use its System.

creditworthiness. Determining factors will be the customers' financial positions and their knowledge and experience in trading options and other derivative products.

ProTrade will require each applicant to disclose, at a minimum, the following information: (1) Trading experience with options and other derivatives, (2) annual income and net worth, (3) history of any account defaults or failures, (4) experience with computers, and (5) existing accounts with other brokers. ProTrade, when it deems it necessary, will obtain credit reports on an applicant. Based on its subjective review of the above criteria, ProTrade may grant or deny customer privileges. Customers also must agree in writing to comply with applicable law and with all of ProTrade's rules. ProTrade will reserve the right to deny access to the System to any person that, among other things, is the subject of a civil injunction or criminal conviction for breach of the laws governing securities or commodities futures.

2. The System's Data Backup

ProTrade reports that it will backup its data daily and that the System itself will have the ability to regenerate electronically all transactions since the previous backup. The System also will be supported by backup hardware that can be put on-line in a matter of seconds.

While customers will be provided with ProTrade's software, the customers will be responsible for their own electronic equipment or hardware. However, if a customer's equipment should break down, the customer could submit orders by telephone to ProTrade where a ProTrade employee will enter the orders.

3. Margin Payment/Collection

Once ProTrade has completed its broker-dealer registration, ProTrade will be subject to Section 7(c) of the Exchange Act, which governs broker-dealer margin requirements.¹⁴ As a consequence of Section 7(c), ProTrade also will be subject to Regulation T of the Board of Governors of the Federal Reserve System ("Federal Reserve System"), which governs credit extended by broker-dealers,¹⁵ and it will be subject to the NASD's rules governing minimum maintenance

¹⁴ 15 U.S.C. 78g (1988).

¹⁵ 12 CFR 220 *et seq.* (1995). See, *esp.*, § 19(f)(2) of Regulation T, 12 CFR 220.19(f)(2), which in general refers a broker-dealer's option margin requirements to the maintenance rules of the broker-dealer's self-regulatory organization ("SRO"). In ProTrade's case, the SRO would be the NASD.

margin for option securities held in customers' accounts.¹⁶

ProTrade states that it will treat all of its customers as margin customers and will require margin collateral for all short positions. ProTrade indicates that its in-house initial margin requirements will be higher than the NASD's maintenance margin requirements to insure that customers have sufficient funds to cover immediate price moves after they open positions. ProTrade further states that it may reject customer applicants and that it may suspend active customers if they are found not to meet margin standards. ProTrade reports that it has programmed its System to reject any order that would open an option position if the subject account does not have the necessary funds or margin and if an existing account were to become undermargined. ProTrade also states that it may choose to vary customer trading limits, margin requirements, and position limits according to the qualifications of each customer.

ProTrade represents that its System is designed to calculate intraday the margin requirements for each account based upon changes in any bid or asked prices that affect an account. The System reportedly will provide ProTrade with real-time reports of under-margined accounts that will allow prompt margin calls and an enhanced ability to prevent account defaults.

4. Default

In the event that a customer's default becomes imminent, ProTrade states that at its discretion it may choose to prevent the default by assuming the customer's positions itself and by creating a hedged position in the cash market. However, ProTrade does not guarantee that it would undertake such bail-out procedures in the face of an imminent default and states that any such efforts would depend upon the circumstances.

In the event of the actual occurrence of a customer default, ProTrade states that it will guarantee full performance to the counterparties. ProTrade does not plan to create a clearing fund in support of this guarantee.¹⁷ ProTrade reports

¹⁶ ProTrade will be subject to NASD margin requirements on its customers' accounts and specifically the margin requirements for options that are not issued by a registered clearing agency. These requirements are set forth in the NASD *Manual*, Rules of Fair Practice, Art. III, § 30(f)(2)(D)(iii).

¹⁷ As a general rule, the Commission has recommended that a clearing agency have a clearing fund which: (1) Is composed of user contributions based on a formula applicable to all users; (2) is held in cash or highly liquid securities; and (3) is limited in purpose to protecting participants and

that it is contemplating the formation of the other risk management facilities such as: (1) A blanket surety bond to be purchased by ProTrade from an insurance company or (2) a transactional insurance fee in the form of a refundable deposit that would be included in the cost of each trade.¹⁸

III. Public Interest Statement

ProTrade believes that exemption from clearing agency registration is critical to its entering the option securities business. ProTrade maintains that its business plan will provide investors with increased access to over-the-counter options through an integrated electronic transaction and margin system, which ProTrade claims will lower trading costs, create processing efficiencies, ensure more fairness and price transparency, and provide a complete audit trail.

ProTrade asserts that these efficiencies will eliminate the need for paperwork, will reduce the time required for order entry and for post-trade processing, and will shorten settlement cycles. Thus, ProTrade believes that its System will improve the option marketplace.

IV. Specific Request for Comments

A. Statutory Standards

Section 17A of the Exchange Act directs the Commission to develop a national clearance and settlement system through, among other things, the registration and regulation of clearing

the clearing agency from participant defaults and from unusual, significant clearing agency losses. Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (order approving standards for clearing agency registration).

However, on one occasion the Commission permitted a clearing agency, Delta Government Options Corp. ("Delta") to register and to operate as a clearing agency without a clearing fund. In Delta's case, the clearing agency's risk management system was deemed adequate, despite the lack of a clearing fund, because Delta had the financial backing of an affiliated corporation and had a substantial credit facility. Securities Exchange Act Release No. 26450 (January 12, 1989), 54 FR 2010 (order approving Delta's registration as a clearing agency).

¹⁸ A transactional insurance fee differs from margin in several ways. In brief, margin is collateral deposited by a customer with a broker in connection with the specific purchase of specific securities, and margin requirements are governed by the Exchange Act and the rules and regulations thereunder as well as certain rules of the Federal Reserve Board and the appropriate self-regulatory organization. Under ProTrade's contemplated transactional insurance fee program, ProTrade would debit a customer's account a certain amount in connection with each transaction and later credit that amount back to the customer's account upon normal settlement of the transaction. Currently, ProTrade is considering a debit in the vicinity of 5% of the value of each transaction. As stated above, ProTrade has not yet decided if it will implement such a program.

agencies.¹⁹ This statutory scheme contemplates that (1) Clearing agencies will provide clearance and settlement functions consistent with statutory goals and (2) as self-regulatory organizations, clearing agencies will exercise certain regulatory functions in furtherance of other statutory goals.

In fostering the development of a national clearance and settlement system generally and in overseeing clearing agencies in particular, Section 17A authorizes and directs the Commission to promote and facilitate certain goals with due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and the maintenance of fair competition among brokers, dealers, clearing agencies, and transfer agents.²⁰ Furthermore, Section 17A, as amended by the Market Reform Act of 1990, directs the Commission to use its authority to facilitate the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options.²¹

Section 17A(b)(1) of the Exchange Act²² authorizes the Commission to exempt applicants from some or all of the requirements of Section 17A if it finds such exemptions are consistent with the public interest, the protection of investors, and the purposes of Section 17A including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds. Historically, the Commission has granted newly registered clearing agencies temporary exemptions from specific statutory requirements imposed by Section 17A in a manner that achieves statutory goals.²³

The Commission recognizes that clearing agencies pose some safety and soundness concerns to the marketplace. Accordingly, the Division has published standards for clearing agency

¹⁹ 15 U.S.C. 78q-1 (1988).

²⁰ For the legislative history of Section 17A of the Exchange Act, refer to Report of Senate Committee on Banking, Housing and Urban Affairs, Securities Acts Amendments of 1975, Report to Accompany S. 249, S. Rep. NO. 75, 94th Cong., 1st Sess. 4-6 (1975).

²¹ Market Reform Act of 1990, § 5, amending § 17A(a)(2) of the Exchange Act, 15 U.S.C. 78q-1(a)(2) (1995 Supp.).

²² 15 U.S.C. 78q-1(b)(1) (1988).

²³ See, e.g., order approving the temporary registration of Government Securities Clearing Corporation ("GSCC") as a clearing agency where the Commission temporarily exempted GSCC from compliance with the Section 17A(b)(3)(C) requirement of the Exchange Act. Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19839.

registration,²⁴ and it has exercised significant continuing oversight over all aspects of clearing agency operations and functions.²⁵ The market break of October 1989 and the market break of October 1991 demonstrated the central role of clearing agencies in the U.S. securities markets in reducing risk, improving efficiency, and fostering investor confidence in the markets.²⁶ In light of the foregoing, the Commission believes that any applicant that requests an exemption from clearing agency registration should meet standards that are substantially similar to those standards required of registered clearing agencies in order to assure that the fundamental goals of Section 17A of the Exchange Act (*i.e.*, safe and sound clearance and settlement) will be achieved. Therefore, commentators are invited to address whether granting the proposed exemption to ProTrade (1) would further the development of a national clearance and settlement system, (2) would promote linked and coordinated clearing facilities (among options, futures, and other financial instruments), and (3) would promote the maintenance of fair competition.

Specifically, ProTrade's application raises the question of whether the establishment of multiple unlinked securities clearing agencies is consistent with Section 17A of the Act. One of the benefits of a single clearing agency is centralized default administration. Conversely, the introduction of multiple options clearing agencies, including options clearing operations that may seem *de minimis* relative to the overall market may have a fragmentation effect that could increase the risks entailed in liquidating defaulting customers. Commentators should discuss applicable law as well as the costs and benefits of single versus multiple clearing facilities for option securities, including whether the risk exposure to individual clearing organizations would be increased by the fragmentation of the clearing function. Commentators also

should discuss the effects that stress to the marketplace (*e.g.*, high volume and high volatility) possibly could have on such a multiple clearing agency system.

B. Fair Competition

Section 17A of the Exchange Act requires the Commission, in exercising its authority under that section, to have due regard for the maintenance of fair competition among clearing agencies.²⁷ In addition, no clearing agency may be registered or granted an exemption from registration, if its rules "impose any burden on competition not necessary or appropriate in furtherance of the purposes" of the federal securities laws.²⁸ Therefore, the Commission must consider an applicant's likely effect on competition in its review of any application for registration as a clearing agency or for an exemption from such registration and must balance any benefits or hindrances to competition against any effects on the other statutory goals.²⁹

The Commission invites commentators to address whether an exemption from registration as a clearing agency for ProTrade would result in increased competition among option broker-dealers and among options clearing agencies and whether such competition would, for example, result in the development of improved systems capabilities, the offering of new services, and the lowering of prices to customers. The Commission also invites commentators to address whether the proposal would impose any burden on competition that is inappropriate under the Exchange Act.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application by February 16, 1995. Such written data, view, and arguments will be considered by the Commission in deciding whether to grant ProTrade's request for an exemption from registration as a clearing agency. Persons desiring to make written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

²⁷ 15 U.S.C. 78q-1(a)(2) (1988).

²⁸ 15 U.S.C. 78q-1(b)(3)(I) (1988).

²⁹ *In Bradford National Clearing Corporation v. Securities and Exchange Commission*, 950 F.2d 1085, 1105 (D.C. Cir. 1978), the court said:

[T]o the extent the legislative history provides any guidance to the Commission in taking competitive concerns into consideration in its deliberations on the national clearing system, it merely requires the [Commission] to "balance" those concerns against all others that are relevant under the statute.

Reference should be made to File No. 600-28. Copies of the application and all written comments will be made available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.³⁰

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-36578; File No. SR-Amex-95-48]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Revised Listing Standards for Equity-Linked Notes

December 13, 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 December 5, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. 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 Amex proposes to amend Section 107B of the Amex Company Guide to provide greater flexibility for the listing of Equity-Linked Notes ("ELNs").

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

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 Amex 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 Amex has prepared summaries, set forth in Sections A, B, and C below of the most significant aspects of such statements.

³⁰ 17 CFR 200.30-3(a)(16) (1994).

²⁴ Securities Exchange Act Release No. 16900 (June 17, 1980) 45 FR 41920 (order approving standards for clearing agency registration).

²⁵ Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (omnibus order granting full registration as clearing agencies to The Depository Trust Company, Midwest Clearing Corporation, Midwest Securities Trust Company, National Securities Clearance Corporation, The Options Clearing Corporation, Pacific Securities Depository, Philadelphia Depository Trust Company, and Stock Clearing Corporation of Philadelphia).

²⁶ Division of Market Regulation, *The October 1987 Market Break* (February 1988), Chap. 10 ("Clearance and Settlement"), *esp.* pp. 10-48 to 10-56; Division of Market Regulation, *Market Analysis of October 13 and October 16, 1989*, pp. 118-173 (December 1990).