

Commission.¹³ Accelerated approval of the proposed rule change will thereby provide for the desired uniformity of equity option hedge exemptions within the exchange traded options market. Any other course of action could lead to unnecessary investor confusion. In addition, the Chicago Board Options Exchange, Inc.'s ("CBOE") proposal was noticed for the entire twenty-one day comment period and generated no negative responses.¹⁴ Lastly, accelerated approval of the rule proposal will allow the NASD's hedge exemption pilot program to continue on an uninterrupted basis. Accordingly, the Commission believes that it is consistent with Section 15A(b)(6) of the Act to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2)¹⁵ of the Act that the proposed rule change (File No. SR-BASD-85-56) is hereby approved on an accelerated basis, and, accordingly, the hedge exemption pilot program as expanded herein is extended until December 31, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Jonathan G. Katz,
Secretary.

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[Release No. 34-36658; File No. SR-NYSE-95-47]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc., Relating to the Exclusion of Certain Orders From Trading at No Charge

December 29, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 29, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 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 Exchange proposes that, effective January 2, 1996, certain orders be excluded from the specified system orders between 100 and 2,099 shares that are eligible to be traded at no charge as set forth in companion filing (SR-NYSE-95-46).² The ineligible orders to be excluded are those with the following descriptions:

An order of a member or member organization trading as agent for the account of a non-member competing market maker. Competing Market Maker: a specialist or market maker registered as such on a registered stock exchange (other than the NYSE), or a market maker bidding and offering over-the-counter, in a New York Stock Exchange-traded security.

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 self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in sections A., B., and C. below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of this filing is to seek approval to exclude specific orders defined in Item I. above from those eligible system orders to be traded at no charge.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(4) that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees, and

other charges among its members, issuers and other persons using its services.

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

The Exchange believes that this proposed fee change will not impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act. The proposed fee change is structured to maintain the current relationship between member proprietary and non-member market maker activities in Exchange-listed securities. In this regard, the Exchange is not seeking to give additional encouragement to members to send to the Exchange proprietary orders of competing market makers, which the Exchange believes would inappropriately promote the direct competitive activities of non-member market makers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.³

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 approve the 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.

³ The Commission notes that the equity transaction charge of \$0.00190 that this filing would impose upon competing market maker system share volume on orders between 100 to 2099 shares was first introduced by the NYSE pursuant to File No. SR-NYSE-95-38, which was noticed for comment in Securities Exchange Act Release No. 36465 (November 8, 1995) 60 FR 57473. The Commission received three comment letters in connection with that filing. These letters are available in File No. SR-NYSE-95-38.

¹³ See *supra* note 11.

¹⁴ *Id.*

¹⁵ 15 U.S.C. § 78s(b)(2) (1988).

¹⁶ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 36659 (December 29, 1995). The Commission notes that pursuant to File No. SR-95-46, the NYSE revised its equity transaction charges, effective January 2, 1996, to eliminate the exclusion currently in place that precludes orders for competing market makers from the no charge provision for system orders between 100 to 2099 shares. This revision had the effect of removing all NYSE equity transaction charges on competing market maker system orders between 100 to 2099 shares. If approved, the NYSE's current filing (SR-NYSE-95-47) would reimpose a charge of \$0.00190 on such share volume, retroactive to January 2, 1996.

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 Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the

NYSE. All submissions should refer to the File Number SR-NYSE-95-47 and should be submitted by February 20, 1996.

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

Jonathan G. Katz,

Secretary.

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