

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 File No. SR-CBOE-96-17 and should be submitted by April 30, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-37062; File No. SR-NASD-96-11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to the Primary Market Maker Standards

April 2, 1996.

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 March 27, 1996, 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 is proposing to amend the Primary Market Maker ("PMM") Standards rule by deleting a provision of the rule that allows a market maker to become a PMM in an issue by registering in the stock and refraining from quoting the issue for five days.¹ Below is the text of the proposed rule change. Proposed deletions are in brackets.

Article III

Rules of Fair Practice

* * * * *

Primary Nasdaq Market Maker Standards

Sec. 49.

* * * * *

(g) In registration situations:

(1) To register and immediately become a Primary Nasdaq Market Maker in a Nasdaq

National Market security, a member must be a Primary Nasdaq Market Maker in 80% of the securities in which it has registered. If the market maker is not a Primary Nasdaq Market Maker in 80% of its stocks, it may qualify as a Primary Nasdaq Market Maker in that stock if:

- (i) the market maker registers in the stock but does not enter quotes for five days; or
- (ii) the market maker registers in the stock as a regular Nasdaq market maker and satisfies the qualification criteria for the next review period.

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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 ("NNM") securities.² The rule, which has been approved by the Commission on a pilot basis through August 3, 1996,³ prohibits member firms from effecting short sales⁴ at or below the current inside bid as disseminated by the Nasdaq system whenever that bid is lower than the previous inside bid.⁵

² See Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994) (approving, *inter alia*, Article III, Section 48 to the NASD Rules of Fair Practice).

³ See Securities Exchange Act Release No. 36532 (Nov. 30, 1995), 60 FR 62519 (Dec. 6, 1995).

⁴ 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. To determine whether a sale is a short sale members must adhere to the definition of a "short sale" contained in SEC Rule 3b-3, which rule is incorporated into Nasdaq's short sale rule by Article III, Section 48(l)(1) of the NASD Rules of Fair Practice.

⁵ Nasdaq calculates the inside bid and the best bid from all market makers in the security (including bids on behalf of exchanges trading Nasdaq securities on an unlisted trading privileges basis), and disseminates symbols to denote whether the current inside bid is an "up bid" or a "down bid." Specifically, an "up bid" is denoted by a green "up" arrow symbol and a "down bid" is denoted by a red "down" arrow. Accordingly, absent an exemption from the rule, a member can not effect a short sale at or below the inside bid in

In order to ensure that market maker activities that provide liquidity and continuity to the market are not adversely constrained when the short sale rule is invoked, the rule provides an exemption to "qualified" Nasdaq market makers.⁶ Even if a market maker is able to avail itself of the qualified market maker exemption, it can utilize the exemption from the short sale rule only for transactions that are made in connection with bona fide market making activity. If a market maker does not satisfy the requirements for a qualified market maker, it can remain a market maker in the Nasdaq system; however, it can not take advantage of the exemption from the rule.

From February 1, 1996 to August 3, 1996, a "qualified" Nasdaq market maker is defined to be a market maker that satisfies the criteria for a PMM found in Section 49 of the NASD Rules of Fair Practice.⁷ To qualify as a PMM, market makers 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 the stock.⁸ If a market maker is a PMM, a "P" indicator is displayed next to its market maker identification to denote that it is a PMM.

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

a security in its proprietary account or an account of a customer if there is a red arrow next to the security's symbol on the screen. In order to effect a "legal" short sale on a down bid, the short sale must be executed at a price at least a 1/16th of a point above the current inside bid. Conversely, if the security's symbol has a green "up" arrow next to it, members can effect short sales in the security without any restrictions. The rule is in effect during normal domestic market hours (9:30 a.m. to 4:00 p.m., Eastern Time).

⁶ Article III, Section 48(c)(1).

⁷ Before the PMM standards went into effect, a "qualified market maker" was defined to be a market maker that had entered quotations in the relevant security on an uninterrupted basis for the preceding 20 business days, the so-called "20-day test."

⁸ For example, if there are 10 market makers in a stock, each dealer's proportionate share volume would be 10 percent; therefore, 1½ times proportionate share volume would mean 15 percent of overall volume.

⁶ 17 CFR 200.30-3(a)(12) (1994).

¹ NASD Manual, Rules of Fair Practice, Art. III, Sec. 49 (CCH) ¶ 22001.

following notice of failure to comply with the standards. Market makers may requalify for designation as a Primary Market Maker by satisfying the threshold standards for the next review period.

If a market maker is a PMM in 80 percent or more of the securities in which it has registered, it may immediately become a PMM (*i.e.*, a qualified market maker) in an NNM security by registering and entering quotations in that issue. If the market maker is not a PMM in at least 80 percent of its stocks, it may qualify as a PMM in that stock if the market maker registers in the stock but does not enter quotes for five days (the "five-day quotation delay rule") or the market maker registers in the stock as a regular Nasdaq market maker and satisfies the qualification criteria for the next review period. The PMM rule also has provisions applicable to initial public offerings, secondary offerings, and merger and acquisition situations.⁹

As discussed above, the "five-day quotation delay" rule permits a market maker to become a PMM by registering in a stock and refraining from entering quotes in the issue for five days. If the market maker commences quoting the issue on the sixth day, it is a PMM in that stock until the next PMM review. Thereafter, to retain the PMM designation, the market maker must meet the PMM standards for the next review period. This provision of the PMM standards was originally put into the rule to ensure that market makers were not registering in a stock to take advantage of momentary short-selling opportunities.

The NASD is concerned, however, that the "five-day quotation delay rule" could be utilized in a manner that undermines the PMM exemption and diminishes the effectiveness of the NASD's short-sale rule. Specifically, the NASD is concerned that the rule could be used to circumvent the application of the PMM standards¹⁰ and/or inflate the percentage of stocks in which they are a PMM above the 80 percent level, thereby entitling them to be a PMM for all initial public offerings and issues that they register in during the next month. Accordingly, in light of these unintended consequences of the rule, the NASD is proposing to delete the provision from the PMM Rule. In sum, because the "five-day quotation delay

rule" allows a market maker to become a PMM for reasons wholly unrelated to the quality with which it makes a market, the NASD believes the provision should be deleted because it is consistent with all other qualitative means by which a market maker can become a PMM.

The NASD believes the proposed rule change is consistent with Section 15A(b)(6) 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, 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, by amending the PMM Rule to provide that market makers will only be exempt from the NASD's short-sale rule if they have met certain performance standards, the NASD believes its proposal will help to ensure that the market maker exemption is not subject to abuse, thereby promoting the effectiveness of the NASD's short-sale 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 data 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 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 SR-NASD-96-11 and should be submitted by April 30, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-37059; International Series Release No. 963; File No. SR-PHLX-96-10]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to a Change in the Holiday Trading Schedule for Foreign Currency Options for Good Friday 1996

April 2, 1996.

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 April 1, 1996, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is approving this proposal on an accelerated basis.

¹¹ 17 CFR 200.30-3(a)(12).

⁹ See Section 49(g)(2) and (3) of the NASD Rules of Fair Practice.

¹⁰ Specifically, it is conceivable that market making affiliates of the same firm could "swap" lists of stocks in which they make a market and alternatively receive PMM designation without ever meeting the quantitative PMM standards.