

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

No written comments relating to the proposed rule change have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within thirty-five 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 ninety 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 CBOE 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 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 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR-CBOE-96-70 and should be submitted by January 24, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-19 Filed 1-2-97; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-38089; File No. SR-NASD-96-50]

Self-Regulatory Organizations; Notice of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to the NASD's Excess Spread Rule Applicable to Market Maker Quotations

December 27, 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 December 16, 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 proposes to amend NASD Rule 4613(d) on a one-year pilot basis to provide that a registered market maker in a security listed on The Nasdaq Stock Market, Inc. ("Nasdaq") shall be precluded from being a registered market maker in that issue for twenty (20) business days if its average spread in the security over the course of any full calendar month exceeds 150 percent of the average of all dealer spreads in such issue for the month. The text of the proposed rule change is as follows. (Additions are italicized; deletions are bracketed.)

* * * * *

NASD Rule 4613 Character of Quotations

(d) Reasonably Competitive Quotations [Excess Spreads]

A registered market maker in a security listed on The Nasdaq Stock Market will be withdrawn as a registered market maker and precluded from re-registering as a market maker in such issue for 20 business days if its average spread in the security over the course of any full calendar month exceeds 150 percent of the average of all dealer spreads in such issue for the month.

(1) If a registered market maker has not satisfied the average spread requirement set forth in this subparagraph (d) for a particular Nasdaq security, its registration in such issue shall be withdrawn commencing on the next business day following the business day on which the market maker was sent notice of its failure to

comply with the requirement. A market maker may request reconsideration of the withdrawal notification. Requests for reconsideration will be reviewed by the Market Operations Review Committee, whose decisions are final and binding on the members. A request for reconsideration shall not operate as a stay of the withdrawal or toll the twenty business day period noted in subparagraph (d) above.

(2) Grounds for requests for reconsideration shall be limited to claims that Nasdaq's calculation of the market maker's average spread for the month was in error.

(3) This subparagraph (d) shall be in effect until January 31, 1998.

[A market maker shall not enter quotations in The Nasdaq Stock Market securities that exceed the parameters for maximum allowable spreads as approved by the Association's Board of Governors and that may be published from time to time by the Association. The maximum allowable spreads for Nasdaq securities shall be 125 percent of the average of the three (3) narrowest market maker spreads in each security (if there are fewer than three (3) market makers in a security, the maximum allowable spread will be 125% of the average spread); provided however, that the maximum allowable spread shall never be less than 1/4 point.]

* * * * *

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

NASD Rule 4613(d), which is commonly known as the NASD's "excess spread rule," presently provides that registered market makers in Nasdaq securities shall not enter quotations that exceed the NASD's parameter for maximum allowable spreads. Specifically, the rule provides that the maximum allowable spread for any Nasdaq security is 125 percent of the

⁴ 17 CFR 200.30-3(a)(12) (1996).

average of the three narrowest market maker spreads in that issue ("125 percent test"), provided, however, that the maximum allowable spread shall never be less than 1/4 of a point.¹

The excess spread rule was originally designed to bring a measure of quality to the Nasdaq market by preventing firms from holding themselves out as market makers without having a meaning quote in the system. Despite the laudable regulatory objectives underlying the excess spread rule, however, many market participants believe the rule has produced a variety of unintended consequences that have undermined the integrity of Nasdaq. Most notably, the SEC found in its 21(a) Report on the NASD and The Nasdaq Stock Market that "the interdependence of quotes mandated by the rule may deter market makers from narrowing their dealer spreads, because, once the spread is tightened, the rule in some instances precludes a market maker from widening the spread to earlier levels."² As a result, the SEC found that the excess spread rule creates an economic incentive for market makers to discourage one another from narrowing their quotes, thereby interfering with the "free flow of prices in the market and imped[ing] attempts by the market to reach the optimal competitive spread."³ Accordingly, the SEC has requested that the NASD "modify the rule to eliminate its undesirable effects, or to repeal it."⁴ In addition, because of the constraints on quote movements created by the rule, market participants claim that the excess spread rule has contributed to locked and crossed markets during periods of market turbulence.

Accordingly, Nasdaq and the NASD are submitting this rule proposal to help to ameliorate adverse consequences the current excess spread rule could potentially have on the competitiveness and independence of quotations displayed on the Nasdaq market. In formulating this proposal Nasdaq and the NASD felt that it was important to strike a reasonable balance between the

need to eliminate any constraints that the excess spread rule places on firms to adjust their quotations and the need to avoid fostering a market environment where registered market makers can maintain inordinately wide spreads and still receive the benefits of being a market maker (e.g., affirmative determination exemption and preferential margin treatment). Nasdaq and the NASD also believe it is critical to transform the excess spread rule into a performance standard used to determine market maker eligibility, instead of a strict regulatory requirement applicable to every quote update in a Nasdaq security, violations of which are punishable by disciplinary action.

With these considerations in mind, Nasdaq and the NASD discussed a variety of proposals to amend the excess spread rule. Ultimately, as discussed below, Nasdaq and the NASD reached a determination to eliminate the current "125 percent test" and instead substitute a new minimal market maker performance requirement that would help to ensure that all registered market makers are providing some threshold level of market making support in their issues. Specifically, under the proposal, a registered market maker would be required to maintain an average spread over the course of any full calendar month equal to or less than 150 percent of the average of all market makers in the issue over the course of the month ("150 percent test"). If a market maker failed to satisfy this standard with respect to a particular issue, it would be forced to withdraw from that issue for at least 20 business days.

Even though the proposed minimal market maker performance standard would have adverse ramifications for those market makers who quote inordinately wide spreads, Nasdaq and the NASD believe the proposal is responsive to the SEC's request that the NASD eliminate the undesirable effects of the excess spread rule. Specifically, because the proposed "150 percent test" is based on the average of all market makers in an issue and not just the three market makers quoting the narrowest spreads and because of the magnitude of increase to 150 percent, Nasdaq and the NASD do not believe that the interdependence of market maker quote movements noted by the SEC in its 21(a) Report will occur with this standard. Moreover, Nasdaq and the NASD believe market makers will not feel constrained to narrow or widen their spreads under the proposal because the "150 percent test" would evaluate a market maker's quotation behavior over the course of a full calendar month,

rather than each time a market maker updates its quote, as is presently the case.

Nasdaq and the NASD also believe it is important to eliminate the current excess spread rule because of the order-driven nature of the Nasdaq market that will be brought about by implementation of the SEC's new limit order display rule on January 10, 1997.⁵ In particular, because spreads in Nasdaq securities likely will narrow because of the display of customer limit orders, the average of the three narrowest market maker spreads will be commensurately narrowed. As a result, the interdependence of market maker quotations highlighted by the SEC in its 21(a) Report will be exacerbated and some market makers may even choose to withdraw from making markets, thus dampening liquidity on Nasdaq and reducing competition among market makers. Conversely, under the current excess spread rule, market makers may have an economic incentive to not accept customer limit orders or only accept those limit orders priced at the inside bid or offer so as to not narrow the maximum allowance spread parameters. Such a development would be completely contradictory to the important investor protection objectives underlying adoption of the SEC's limit order display rule. Because neither result is acceptable, Nasdaq and the NASD believe that the current excess spread rule should be eliminated.

While Nasdaq and the NASD believe the proposed "150 percent test" will help to ensure that market makers maintain at least a minimal level of commitment to their issues, Nasdaq and the NASD, nevertheless, believe it would be prudent to not impose the "150 percent test" on a permanent basis until there is a substantial basis to conclude that the "150 percent test" has not contributed to or fostered the same unintended consequences created by the current excess spread rule (e.g., the interdependence of market maker quote movements and the exacerbation of locked and crossed market situations). Accordingly, Nasdaq and the NASD propose that the "150 percent test" be implemented on a one-year pilot basis until January 31, 1998. During the pilot period, Nasdaq and the NASD will analyze market maker quotation behavior to determine whether the rule

¹ Unrelated to the excess spread rule, there is also a dealer spread test that is part of the NASD's Primary Market Maker ("PMM") standards that are used to determine the eligibility of market makers to an exemption from the NASD's short sale rule for short sales effected during the course of bona fide market making activity. Specifically, the market maker spread component of the PMM standards provides that a market maker must maintain a spread no greater than 102 percent of the average dealer spread.

² See Appendix to Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and The Nasdaq Stock Market ("21(a) Report"), SEC, August 8, 1996, at p. 98.

³ *Id.* at p. 99.

⁴ *Id.*

⁵ SEC Rule 11Ac1-4 requires the display of customer limit orders that are priced better than a market maker's quote or that add to the size associated with a market maker's quote when the market maker is at the best price in the market. See Securities Exchange Act Release 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) ("Order Handling Rule Adopting Release").

has met its dual objectives of removing constraints on market maker quotation movements and ensuring some minimal level of commitment by market makers to their issues. Throughout the pilot period, Nasdaq and the NASD also will proactively explore whether there are other alternative means to achieve these objectives without reliance on a quotation-based evaluation criteria.

In addition, because a market maker would be precluded from functioning as a registered market maker in a particular Nasdaq security for twenty business days if it failed to meet the "150 percent test", the proposal also amends NASD Rule 4613(d) to afford market makers the opportunity to request reconsiderations of their withdrawal notices. Requests for reconsideration will be reviewed by the Market Operations Review Committee, whose decisions will be final and binding on the members. Because Nasdaq and the NASD believe that such reconsiderations should be exclusively limited to an evaluation as to whether the "150 percent test" was indeed satisfied, the proposed rule change provides that the grounds for reconsideration shall be limited to claims that Nasdaq's calculation of the market maker's average spread for the month was in error.

The NASD believes that the proposed rule change is consistent with Sections 15A(b)(6), 15A(b)(9), 15A(b)(11) and 11A(a)(1)(C) of the Act. Among other things, 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. Section 15A(b)(9) provides that the rules of the Association may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Section 15A(b)(11) empowers the NASD to adopt rules governing the form and content of quotations relating to securities in the Nasdaq market. Such rules must be designed to produce fair and informative quotations, prevent fictitious and misleading quotations, and promote orderly procedures for collecting and distributing quotations. Section 11A(a)(1)(C) provides that it is in the public interest to, among other things,

assure the economically efficient execution of securities transactions and the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Specifically, because Nasdaq and the NASD believe the proposed "150 percent test" will help to ameliorate adverse consequences the current excess spread could potentially have on the competitiveness and independence of quotations displayed on the Nasdaq market, Nasdaq and the NASD believe the proposed rule change will promote the integrity of quotations on the Nasdaq market and enhance competition among market makers, thereby contributing to greater market liquidity, improved price discovery, and the best execution of customer orders. At the same time, while Nasdaq and the NASD believe the proposed "150 percent test" will remove a constraint on market maker quote movements, Nasdaq and the NASD also believe that the proposal will help to ensure that all registered market makers are providing some threshold level of market making support in their issues. Nasdaq and the NASD also believe that use of the "150 percent test" will avoid fostering a market environment where registered market makers can maintain inordinately wide spreads and still receive the benefits of being a market maker. Accordingly, the NASD and Nasdaq believe the proposed rule change is consistent with all of the above-cited Sections of the Act and the rules thereunder.

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

The NASD and Nasdaq request that the Commission find good cause to accelerate the effectiveness of the proposed rule change pursuant to Section 19(b)(2) of the Act by January 10, 1997. As noted above in the text accompanying footnote 5, Nasdaq and the NASD believe that serious market consequences could potentially result from retention of the current excess

spread rule in a market environment where customer limit orders are required to be displayed. Accordingly, since implementation of the SEC's new limit order display rule is scheduled to commence on January 10, 1997, Nasdaq and the NASD believe good cause exists to accelerate approval of the proposed rule change on or prior to January 10, 1997. In addition, in a separate rule filing, SR-NASD-96-43, Nasdaq and the NASD proposed to modify the SOES Automated Quotation Update Feature so that only one side of a market maker's quote would be updated when its quote size has been decremented to zero through SOES executions. By updating the bid or the offer, but not both, the NASD and Nasdaq believe the auto-refresh feature will not exacerbate or contribute to locked or crossed markets, as has been the case with the current update feature during turbulent market conditions. Accordingly, Nasdaq and the NASD believe that the instant rule filing and SR-NASD-96-43 should be approved in tandem and, therefore, that good cause exists to accelerate approval of the instant rule filing if such acceleration is necessary to ensure that both filings are approved at the same time.

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 file number SR-NASD-96-50 and should be submitted by January 24, 1997.

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

⁶ 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 97-20 Filed 1-2-97; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before March 4, 1997.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, SW., Suite 5000, Washington, DC 20416. Phone Number: 202-205-6629.

SUPPLEMENTARY INFORMATION:

Title: "Disaster Home Loan Application."

Type of Request: Extension of a Currently Approved Collection.

Form No's.: 5C, 739, 1632.

Description of Respondents: Applicants Requesting SBA Disaster Home Loans.

Annual Responses: 26,100.

Annual Burden: 52,200.

Comments: Send all comments regarding this information collection to Bridget Dusenbury, Disaster Resource Specialist, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, SW., Suite 6500 Washington, DC 20416. Phone No.: 202205-6734.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Jacqueline White,
Chief, Administrative Information Branch.
[FR Doc. 97-3 Filed 1-2-97; 8:45 am]

BILLING CODE 8025-01-P

Small Business Administration Interest Rates; Notice

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may

be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 6⁵/₈ percent for the January-March quarter of FY 97.

Pursuant to 13 CFR 120.932, the maximum legal interest rate for a commercial loan which funds any portion of the cost of a project (see 13 CFR 120.801) shall be 6% over the New York prime rate. The initial rate for a fixed rate loan shall be the legal rate for the term or the loan.

John. R. Cox,
Associate Administrator for Financial Assistance.

[FR Doc. 97-2 Filed 1-2-97; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc., Special Committee 182; Minimum Operational Performance Standards (MOPS) for an Avionics Computer Resource

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 182 meeting to be held January 22-24, 1997, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Chairman's Introductory Remarks; (2) Review and Approval of Meeting Agenda; (3) Review and Approval of Minutes from the Previous Meeting; (4) Reports from Related Industry Meetings; (5) Role of ARP 4754, Certification Consideration for Highly Integrated or Complex Aircraft Systems; (6) Review of MOPS Draft Version 0.3; (7) Web Forum: Plan for MOPS Document Administration; (8) Discussion Papers; (9) Position Papers; (10) Glossary Additions; (11) Other Business; (12) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833-9339 (phone) or (202) 833-9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 27, 1996.

Steve Zaidman,
Director, Office of System Architecture and Investment Analysis, Designated Official.
[FR Doc. 97-80 Filed 1-2-97; 8:45 am]

BILLING CODE 4810-13-M

RTCA, Inc. Special Committee 169; Aeronautical Data Link Applications

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (P.L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)-169 meeting to be held January 28-29, 1997, starting at 9:00 a.m. The meeting will be held at RTCA, Inc. 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036.

The agenda will include: (1) Plenary Administration: Chairman's Introductory Remarks; Review and Approval of Meeting Agenda; Review and Approval of Minutes from the Previous Meeting; Review of Outstanding Action Items; (2) Working Group (WG) Progress: WG-1, Air/Ground Air Traffic Service Applications; WG-2, Systems Architecture/ Performance; WG-3, Flight Information Services Applications; WG-4, International Coordination; WG-5, Ground/Ground Traffic Flow Management Applications; (3) Plenary Business; Final Review/ Approval of *Minimum Aviation System Performance Standards (MASPS) for Air Traffic Management (ATM)*—*Aeronautical Operational Control (AOC) Ground-Ground Information Exchange*, RTCA Paper No. 440-96/SC169-273; Review of SARP Compliant Documents; Discussion of Future of SC-169 Work Efforts; (4) Other Business; (5) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036; (202) 833-9339 (phone) or (202) 833-9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 27, 1996.

Steve Zaidman,
Director, Office of System Architecture and Investment Analysis, Designated Official.
[FR Doc. 97-81 Filed 1-2-97; 8:45 am]

BILLING CODE 4810-13-M