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

Written 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 date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD 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. People 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 the filing will also be available for inspection and copying at the NASD's principal offices. All submissions should refer to File No. SR–NASD–97–59 and should be submitted by September 24, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

[FR Doc. 97–23342 Filed 9–2–97; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12) (1997).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38979; File No. SR–NASD–97–58]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Requesting Permanent Approval of the NASD's Short Sale Rule

August 26, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder, notice is hereby given that on August 11, 1997, 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 implement its short sale rule (''Rule'') on a permanent basis. The text of the proposed rule change is as follows. Additions are italicized; deletions are bracketed.

* * * * *

NASD Rule 3350

* * * * *

(k)(3)[(A) Until February 1, 1996, the term *qualified market maker* shall mean a registered Nasdaq market maker that has maintained, without interruption, quotations in the subject security for the preceding 20 business days. Notwithstanding the 20-day period specified in this subsection, after an offering in a stock has been publicly announced, a registration statement has been filed, or a merger or acquisition involving two issues has been announced, no market maker may register in the stock as a qualified market maker unless it meets the requirements set forth below:

(i) For secondary offerings, the offering has become effective and the market maker has been registered in and maintained quotations without interruption in the subject security for 40 calendar days;

(ii) For initial public offerings, the market maker may register in the offering and immediately become a qualified market maker; provided however, that if the market maker withdraws on an unexcused basis from the security within the first 20 days of the offering, it shall not be designated as a qualified market maker on any subsequent initial public offerings for the next 10 business days;

(iii) After a merger or acquisition involving an exchange of stock has been publicly announced and not yet consummated or terminated, a market maker may immediately register in either or both of the two affected securities as a qualified market maker pursuant to the same-day registration procedures in Rule 4611; provided, however, that if the market maker withdraws on an unexcused basis from any stock in which it has registered pursuant to this subsection within 20 days of so registering, it shall not be designated as a qualified market maker pursuant to this subparagraph (3) for any subsequent merger or acquisition announced within three months subsequent to such unexcused withdrawal.

(B) for purposes of this subparagraph (3), a market maker will be deemed to have maintained quotations without interruption if the market maker is registered in the security and has continued publication of quotations in the security through the Nasdaq on a continuous basis; provided however, that if a market maker is granted an excused withdrawal pursuant to the requirements of Rule 4619, the 20 business day standard will be considered uninterrupted and will be calculated without regard to the period of the excused withdrawal. Beginning February 1, 1996, t]*T*he term *qualified market maker* shall mean a registered Nasdaq market maker that meets the criteria for a Primary Nasdaq Market Maker as set forth in Rule 4612.

[(l) This section shall be in effect until October 1, 1997.]

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 parts of such statements.

[1] 15 U.S.C. § 78s(b)(1) (1994).

[2] 17 CFR 240.19b–4 (1997).

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

1. Background and Description of the NASD's Short Sale Rule

On June 29, 1994, the SEC approved the rule applicable to short sales [3] in Nasdaq National Market (''NNM'') securities on an eighteen-month pilot basis through March 5, 1996.[4] The Rule prohibits member firms from effecting short sales at or below the current inside bid as disseminated by Nasdaq whenever that bid is lower than the previous inside bid.[5] The Rule is in effect during normal domestic market hours (9:30 a.m. to 4:00 p.m., Eastern Time).

i. Market Maker Exemption

In order to ensure that market maker activities that provide liquidity and continuity to the market are not adversely constrained when the Rule is invoked, the Rule provides an exemption to ''qualified'' Nasdaq market makers. Even if a market maker is able to avail itself of the qualified market maker exemption, it can only utilize the exemption from the Rule 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, although it can not take advantage of the exemption from the Rule.

Since the rule has been in effect, there have been three methods used to determine whether a market maker is eligible for the market maker exemption. Specifically, from September 4, 1994 through February 1, 1996, Nasdaq market makers who maintained a quotation in a particular NNM security for 20 consecutive business days without interruption were exempt from the Rule for short sales in that security, provided the short sales were made in connection with bona fide market making activity (the ''20-day'' test). From February 1, 1996 until the February 14, 1997, the ''20-day'' test was replaced with a four-part quantitative test known as the Nasdaq Primary Market Maker (''PMM'') Standards.[6] On February 14, 1997, the PMM standards were waived for all NNM securities due to the effects of the SEC's Order Handling Rules and corresponding NASD rule change and system modifications on the operation of the four quantitative standards.[7] For example, among other affects, the requirement that market makers display customer limit orders adversely effected the ability of market makers to satisfy the ''102% Average Spread Standard.'' Nasdaq is presently in the process of formatting revised PMM standards that focus principally on whether a market maker is a ''net'' provider of liquidity.

While all registered market makers are presently eligible for the market maker exemption, in the event that Nasdaq implements revised PMM standards, the ability of a member firm to achieve and maintain PMM status in 80 percent of the NNM issues in which it is registered can also have the following corollary effects, as was the case when the PMM standards were in effect from February 1, 1996 through February 14, 1997.

a. Existing NNM Securities: if a member firm is a PMM in 80 percent or more of the securities in which it has registered, the firm may immediately become a PMM (*i.e.,* qualified market maker) in a NNM security by registering and entering quotations in that issue. If the member firm is not a PMM in at least 80 percent of its stocks, it may become a PMM in that stock if it registers in the stock as a regular Nasdaq market maker and satisfies the PMM qualification standards for the next review period.

b. Initial Public Offerings (''IPOs''): if a member firm has obtained PMM status in 80 percent or more of the stocks in which it has registered, the firm may immediately become a PMM in an IPO by registering and entering quotations in the issue. However, if the firm: (1) Withdraws from the IPO on an unexcused basis any time during the calendar month in which the IPO commenced trading on Nasdaq or (2) fails to meet the PMM standards for the month in which the IPO commenced trading on Nasdaq,[8] then the firm is precluded from becoming a PMM in any other IPO for ten business days following the unexcused withdrawal or failure to meet the PMM standards (''10-day rule'').[9]

c. Merger and Acquisition Situations: after a merger or acquisition is announced, a market maker that is a PMM in one stock may immediately become a PMM in the other stock by registering and entering quotations in that issue.

[3] 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 Rule 3b–3 of the Act, which rule is incorporated into Nasdaq's Rule by NASD Rule 3350(k)(1).

[4] Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994) [File No. SR–NASD–92–12] (''Short Sale Rule Approval Order''). The termination date for the pilot program for the Rule was subsequently extended through October 1, 1997. Specifically, the termination date was extended twice due to delays in the implementation of the NASD's Primary Market Maker Standards. Securities Exchange Act Release No. 36532 (November 30, 1995), 60 FR 62519 (December 6, 1995) [File No. SR–NASD–95–58]; *see also* Securities Exchange Act Release No. 36171 (August 30, 1995), 60 FR 46651 (September 7, 1995) [File No. SR–NASD–95–35]. The most recent extension of the pilot program through October 1, 1997, was approved by the SEC to afford the NASD a better opportunity to examine the effectiveness of the Rule and the impact of the market maker exemption from the Rule. Securities Exchange Act Release No. 37917 (November 1, 1996), 61 FR 57934 (November 8, 1996) [File No. SR–NASD–96–41]. In this connection, in order to enhance its ability to examine the impacts of the market maker exemption, the NASD received SEC approval of its proposal to require market makers to mark their ACT reports to denote when they have relied on the market maker exemption. Securities Exchange Act Release No. 38240 (February 5, 1997), 62 FR 6290 (February 11, 1997) [File No. SR–NASD–96–52].

[5] Nasdaq calculates the inside bid or 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 and a ''down bid'' is denoted by a red ''down'' arrow. To effect a ''legal'' short sale on a down bid, the short sale must be executed at a price at least a $\frac{1}{16}$th 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.

[6] Under the PMM Standards, a market maker was required to satisfy at least two of the following four criteria each month to be eligible for an exemption from the Rule: (1) The market maker must be at the best bid or best offer as shown on Nasdaq 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 $1\frac{1}{2}$ times its ''proportionate'' volume in the stock. If a PMM did not satisfy the threshold standards after a particular review period, the market maker lost its designation as a PMM (i.e. the ''P'' next to its market maker identification was removed). Market makers could requalify for designation as a PMM by satisfying the threshold standards in the next review period.

[7] Securities Exchange Act Release No. 38294 (February 14, 1997), 62 FR 8289 (February 24, 1997) [File No. SR–NASD–97–07].

[8] On June 20, 1996, the NASD submitted a rule filing to the SEC that clarified the applicable PMM review period for IPOs listed during the last five business days of a month. Securities Exchange Act Release No. 37426 (July 11, 1996), 61 FR 37521 [File SR–NASD–96–25].

[9] The PMM rule also has provisions applicable to secondary offerings. Specifically, unless a market maker is registered in a security prior to the time a secondary offering in that stock has been publicly announced or a registration statement has been filed, it cannot become a PMM in the stock unless: (1) The secondary offering has become effective and the market maker has satisfied the PMM standards between the time the market maker registered in the security and the time the offering became effective or (2) the market maker has satisfied the PMM standards for 40 calendar days. Managers and co-managers of secondary offerings can register and immediately become a PMM in an issue prior to the effective date of the secondary offering, however.

ii. Options Market Maker Exemption

In an effort to not constrain the legitimate hedging needs of options market makers, the Rule also contains a limited exception for standardized options market makers. Specifically, under the Rule, an NASD member may execute a short sale for the account of an equity option market maker or an index option market maker that would otherwise be in contravention of the Rule as long as: (1) The short sale is an ''exempt hedge transaction'';[10] and (2) the options market maker is registered with a ''qualified options exchange'' [11] as a ''qualified options market maker'' [12] in a stock options class overlying a NNM security or in an options class overlying a ''qualified stock index.'' [13]

iii. Warrant Market Maker Exemption

The Rule also contains an exemption for warrant market makers similar to the one available for options market makers. To be eligible for the exemption, a warrant market maker must be registered as a market maker in the warrant and the short sale must be an ''exempt hedge transaction'' [14] that results in a fully hedged position. However, any short sale by a warrant market maker unrelated to normal warrant market maker activity, such as index arbitrage or risk arbitrage that in either case is independent of a warrant market maker's market making functions, is not considered an ''exempt hedge transaction.''

iv. Exemptions Comparable to Those Contained in Rule 10a–1 Under The Act

The Rule also incorporates seven exemptions contained in Rule 10a–1 under the Act [15] (''Rule 10a–1'') that are relevant to trading on Nasdaq. Specifically the Rule exempts:

- Sales by a broker-dealer for an account in which it has no interest and that is marked long;
- Any sale by a market maker to offset odd-lot orders of customers;
- Any sale by any person, for an account in which he has an interest, if such person owns the security sold and intends to deliver such securities as soon as possible without undo inconvenience or expense;
- Sales by a member to liquidate a long position which is less than a round lot, provided the sale does not change the member's position by more than one unit of trading (100 shares);
- Short sales effected by a person in a special arbitrage account;[16]
- Short sales effected by a person in a special international arbitrage account;[17] and
- Short sales by an underwriter or any member of the distribution syndicate in connection with the over-allotment of securities, or any lay-off sale by such a person in connection with a distribution of securities rights pursuant to Rule 10b–18 under the Act or a standby underwriting commitment.

The Rules also provides that a member not currently registered as a Nasdaq market maker in a security that has acquired the security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of the Rule notwithstanding that such member may not have a net long position in such security, if and to the extent that such member's short position in such security is subject to one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities. In addition, the NASD has recognized that SEC staff interpretations to Rule 10a–1 dealing with liquidation of index arbitrage positions [18] and an ''international equalizing exemption'' [19] are equally applicable to the NASD's Rule.

v. Interpretations of the NASD's Short Sale Rule

In conjunction with the adoption of the Rule, the NASD also issued three Interpretations by the NASD Board of Governors dealing with the Rule. Interpretation A to the Rule clarifies some of the factors that will be taken into consideration when reviewing market making activity that may not be deemed to be bona fide market making activity and, therefore, not exempt from the Rule's application.[20] Interpretation

[10] For equity option market makers, an ''exempt hedge transaction'' is defined to be a short sale in a NNM security that was effected to hedge, and in fact serves to hedge, an existing offsetting options position or an offsetting options position that was created in a transaction(s) contemporaneous with the short sale, provided that when establishing the short position the options market maker receives, or is eligible to receive, good faith margin pursuant to Section 220.12 of Regulation T under the Act. For index option market makers, an ''exempt hedge transaction'' is defined to be a short sale in a NNM security that was effected to hedge, and in fact serves to hedge, an existing offsetting stock index options position or an offsetting stock index options position that was created in a transaction(s) contemporaneous with the short sale, provided that: (1) The security sold short must be a component security of the index underlying such index option; (2) the index underlying such offsetting index options position is a ''qualified stock index''; and (3) the dollar value of all exempt short sales effected to hedge the offsetting stock index options position(s) does not exceed the aggregate current index value of the offsetting options position(s).

[11] A ''qualified options exchange'' is defined to be a national securities exchange that has received SEC approval of its rules and procedures governing: (1) The designation of options market makers as qualified options market makers; (2) the surveillance of its market makers' utilization of the exemption; and (3) authorization of the NASD to withdraw, suspend, or modify the designation of a qualified options market maker in the event that the options exchange determines that the qualified options market maker has failed to comply with the terms of the exemption and the exchange believes that such action is warranted in light of the substantial, willful, or continuing nature of the violation. All national securities exchanges that trade standardized options are ''qualified options exchanges.''

[12] An options market maker is a ''qualified options market maker'' if it has been appointed as such by a qualified options exchange.

[13] A ''qualified stock index'' is defined to be a stock index that includes one or more NNM securities, provided that more than 10% of the weight of the index is accounted for by NNM securities. In addition, qualified stock indexes are reviewed as of the end of each calendar quarter, and an index would cease to qualify if the value of the index represented by one or more NNM securities was less than 8 percent at the end of any subsequent calendar quarter.

[14] An ''exempt hedge transaction'' is a short sale in a NNM security that was effected to hedge, and in fact serves to hedge, an existing offsetting warrant position that was created in a transaction contemporaneous with the short sale.

[15] 17 CFR 240.10a–1 (1997).

[16] In order to fall within this exemption, the person effecting the short sale must then own another security by virtue of which the person is, or presently will be entitled to acquire an equivalent number of securities of the same class of securities sold short, provided the short sale, or the purchase which such sale offsets is effected for the bona fide purpose of profiting from a current difference between the price of the security sold short and the security owned, and such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any such class of securities of the issuer.

[17] In order to fall within this exemption, the short sale must be effected for the bona fide purpose of profiting from a current difference between the price of such security on a securities market not within or subject to the jurisdiction of the United States and a securities market subject to the jurisdiction of the United States, provided the person at the time of such sale knows or, by virtue of information currently received, has reasonable grounds to believe that an offering enabling a person to cover such sale is then available to the person in such foreign securities market and intends to accept such offer immediately.

[18] In 1986, the SEC took a ''no action'' position that allows broker-dealers to sell short on a down tick while liquidating index arbitrage positions under certain conditions. This no-action position was clarified in a later SEC Release and the SEC has proposed to amend Rule 10a–1 to incorporate this interpretation. Securities Exchange Act Release No. 30772 (June 3, 1992), 57 FR 24415 (June 9, 1992) [File No. S7–13–92]

[19] Specifically, the NASD has interpreted its Rule to provide that any person can sell a foreign security, or a depositary share or depositary receipt relating to such a security, on a down bid at the opening, provided the inside bid is equal to or above the last reported sale price (adjusted for current exchange rates and ADR multiples) of the security in the principal foreign market for that security.

[20] Specifically, Interpretation A provides that bona fide market making activity does not include activity that is unrelated to market making functions, such as index arbitrage and risk arbitrage that is independent from a member's market making functions. Similarly, the Interpretation states that bona fide market making would exclude activity

Continued

B defines a ''legal'' short sale on a down bid as one that is executed at a price of at least a 1⁄16 of a point above the current inside bid.[21] Finally, Interpretation C clarifies some of the circumstances under which a member would be deemed to be in violation of the Rule.[22]

2. Proposal To Adopt the Short Sale Rule on a Permanent Basis

When the Commission approved the Rule on a temporary basis, it made specific findings that the Rule was consistent with Sections 11A, 15A(b)(6), 15A(b)(9), and 15A(b)(11) of the Act. Specifically, the Commission stated that, ''recognizing the potential for problems associated with short selling, the changing expectations of Nasdaq market participants and the competitive disparity between the exchange markets and the OTC market, the Commission believes that regulation of short selling of Nasdaq National Market securities is consistent with the Act.''[23] In addition, the Commission stated that it ''believes that the NASD's short sale bid-test, including the market maker exemption, is a reasonable approach to short sale regulation of Nasdaq National Market securities and reflects the realities of its market structure.''[24]

Nevertheless, in light of the Commission's concerns with adverse comments made about the Rule and the Commission's own concerns with the structure and impact of the Rule,[25] the Commission determined to approve the Rule on a temporary basis to afford the NASD and the SEC an opportunity to study the effects of the Rule and its exemptions. In particular, before considering any NASD proposal to extend, modify, permanently implement or terminate the Rule, the Commission requested that the NASD examine: (1) The effects of the Rule on the amount of short selling; (2) the length of time that the Rule is in effect (*i.e.*, the duration of down bid situations); (3) the amount of non-market maker short selling permitted under the Rule; (4) the extent of short selling by market makers exempt from the Rule; (5) whether there have been any incidents of perceived ''abusive short selling''; (6) the effects of the Rule on spreads and volatility; (7) whether the behavior of bid prices has been significantly altered by the Rule; and (8) the effect of permitting short selling based on a minimum increment of 1⁄16.

Accordingly, in response to the Commission's request and concerns, the NASD's Economic Research Department has prepared two studies on the economic impact of the Rule that addresses these issues.[26]

i. July 1996 Short Sale Study

The first study prepared in July 1996 examined market activity both before and after implementation of the Rule and found that the Rule has had its intended effect of diminishing short selling at the bid in declining markets, while still allowing short sales to occur at prices slightly above the bid in down bid situations.[27] Specifically, among other things, the July 1996 Short Sale Study found that:

- The Rule appears to dramatically reduce the amount of the short selling on down-bids, without having the undesirable effect of driving away all non-exempt short sales on down bids;
- Stocks with large down-bid percentages (*i.e.*, the average percentage of time during the trading day that the Rule is invoked) are not associated with economically-large reductions in market quality, as measured by relative displayed spreads, percent bid range, and trading activity;
- For stocks with large monthly increases in short interest, implementation of the Rule has been associated with lower bid price volatility and narrower dollar spreads;
- The Rule does not appear to have reduced overall sales at the bid by non-exempt sellers (long and short sales combined). Thus, because short sales at the bid on down bids by non-exempt short sellers are prohibited,[28] the results illustrate that short sales at the bid have been replaced by long sales at the bid during down-bids for these securities;
- Apparent ''unnatural'' bid price movement occurred extremely infrequently (0.6 percent or fewer of all bid changes evaluated in the study), indicating that market makers are not attempting to move bids to invoke or deactivate the Rule;
- On a stock-by-stock basis, the percentage of volume accounted for by short sales increases as the stock experiences larger price declines as opposed to price increases or no price changes, suggesting that speculative short selling is more apt to occur when stock prices are falling; and
- Exempt short sales generally are executed above the bid, indicating that market makers are not abusing the exemption. Specifically, in a down-bid environment, 7.5 percent of exempt short sales are executed at or below the bid, while the comparable figure during an up-bid environment is 8.7 percent.

Interviews conducted in conjunction with the July 1996 Short Sale Study also indicate that the Rule has been effective in promoting the integrity of the Nasdaq

that is related to speculative selling strategies of the member or investment decisions of the firm and is disproportionate to the usual market making patterns or practices of the member in that security. In addition, the Interpretation provides guidance with respect to what constitutes bona fide market making in the context of a merger or acquisition situation.

[21] In light of Nasdaq's move to minimum quote increments of a 1⁄16 for Nasdaq stocks priced above $10 on June 2, 1997, Nasdaq has filed a proposed rule change (SR–NASD–97–59) with the Commission to modify the ''legal'' definition of a short sale. In sum, the proposed rule change provides that a ''legal'' short sale must be effected at the offer side of the market when the inside spread for a security is less than a 1⁄16. In other words, if the inside spread is 1⁄16 or greater, there will be no change to the current definition of a legal short sale. For stocks with a spread less than a 1⁄16, however, a legal short sale must be effected at a price at or above the inside offer.

[22] Specifically, the Interpretation contains the following non-exhaustive list of activities that would be considered to be manipulative acts and violations of the rule: (a) In instances where the current best bid is below the preceding best bid, if a market maker alone at the inside best bid were to lower its bid and then raise it to create an ''up bid'' for the purpose of facilitating a short sale; (b) if a market maker with a long stock position were to raise its bid above the inside bid and then lower it to create a ''down bid'' for the purpose of precluding market participants from selling short; (c) if a market maker agrees to an arrangement proposed by a member or a customer whereby the market maker raises its bid in the Nasdaq system in order to effect a short sale for the other party and is protected against any loss on the trade or on any other executions effected at its new bid price; and (d) if a market maker entered into an arrangement with a member or a customer whereby it used its exemption from the rule to sell short at the bid at successively lower prices, accumulating a short position, and subsequently offset those sales through a transaction at a prearrange price, for the purpose of avoiding compliance with the rule, and with the understanding that the market maker would be guaranteed by the member of customer against losses on the trades.

[23] Short Sale Rule Approval Order, *supra* note 4, at 34891.

[24] *Id.* at 34892.

[25] When the NASD's Rule was first considered by the Commission, the SEC received 397 comment letters on the proposal, with 275 comments opposed to the Rule and 122 comments in favor of the Rule. Those comment letters opposed to the Rule argued that: (1) The NASD had failed to provide sufficient evidence of the need for the Rule or demonstrate the appropriateness of the Rule based on a ''bid'' test instead of ''tick'' test; (2) the PMM standards will have negative effects on both market makers and the Nasdaq market; and (3) the Rule is inconsistent with the requirements of the Act.

[26] Both of the studies prepared by the NASD's Economic Research Department have been submitted to the SEC under separate letter and are part of this filing.

[27] The Economic Impact of the Nasdaq Short Sale Rule, NASD Economic Research Department (July 23, 1996) (''July 1996 Short Sale Study'').

[28] Specifically, the July 1996 Short Sale Study found that only 2.8 percent of short sales by non-exempt short sellers occur at or below the inside bid in down-bid situations. Because the Rule prohibits short sales at the bid on down bids, this figure should theoretically be zero. Reasons why this figure is 2.8 percent include, among others, improper alignment of trades and their corresponding inside quotes, potential reporting errors and violations of the rule.

market. Specifically, most market participants interviewed stated that the Rule has had the effect of slowing down the ''piling on'' of short sales in a declining market, thereby contributing to greater market stability. At the same time, market participants indicated that the Rule does not unduly constrain them from effecting short sales in a declining market, although they say it does take them longer to execute short sales in a falling market. Most market participants interviewed also stated that the exemptions from the Rule are warranted and have not been abused. In particular, most market participants interviewed reiterated the importance of retaining the market maker exemption and stated that there is no need to change the PMM standards. Similarly, the American Stock Exchange and the Chicago Board Options Exchange, the two largest standardized options markets in the United States, both stated that the options market maker exemption has performed well and that the exchanges have not detected any abuses of the exemption by their members. In sum, the NASD believes that the market participant interviews corroborate and provide further support for the empirical findings made in the quantitative portion of the July 1996 Short Sale Study. Namely, that the Rule has been effective in accomplishing what the NASD intended the Rule to accomplish (*i.e.*, reducing speculative short selling at the bid in declining markets) without causing unnecessary disruptions elsewhere in the marketplace.

ii. August 1997 Short Sale Study

In August 1997, the NASD's Economic Research Department prepared another study on the economic impact of the Rule that reaffirmed the findings of the July 1996 Short Sale Study.[29] In addition, because market makers have been required to denote when they have effected exempt short sales or short sales on their ACT reports since April 14, 1997, the August 1997 Short Sale Study also provides a more detailed and precise analysis of the extent to which market makers have utilized the market maker exemption and the market impact of such exempt short sales. Specifically, with respect to the economic impact of the Rule, the August 1997 Short Sale Study utilized a variety of regression models to evaluate whether implementation of the rule has had any economically significant impact on four measures of market quality—quoted spreads, effective spreads, volatility, and aggregate quoted depth at the inside market. In sum, consistent with the July 1996 Short Sale Study, the results of the regressions demonstrate that implementation of the Rule has not been associated with any economically significant adverse market effects.

The August 1997 Short Sale Study also sets forth a variety of statistics that clearly illustrate that market makers are providers of immediate liquidity that has a stabilizing effect on the market and that market makers, in general, have used the exemption in a manner that is consistent with and in furtherance of providing immediate liquidity to the marketplace. For example, to show that market makers are net providers of liquidity, the August 1997 Short Sale Study found that 52% of market maker volume was accounted for by purchases at the bid and sales at the offer; whereas only 16.7% of market maker volume was accounted for by sales at the bid and purchases at the offer. In contrast, the August 1997 Short Sale Study found that 49.4% of share volume by non-market makers was accounted for by sales at the bid and purchases at the offer, whereas only 18.2% of non-market maker volume was accounted for by purchases at the bid or sales at the offer. Moreover, the August 1997 Short Sale Study found that a wide majority of market maker volume was executed in a market stabilizing manner (*i.e.*, purchases during declining markets and sales during rising markets).

Given that these statistics sufficiently demonstrate that market makers are net providers of immediate and stabilizing liquidity to the marketplace, the August 1997 Short Sale Study then examined whether the market maker exemption was being used in a manner consistent with such stabilizing trading activity. In this connection, the August 1997 Short Sale Study found that:

• Only 1.27% of market maker share volume was effected in reliance on the market maker exemption;

• In those instances where market makers were selling short at prices less than a 1⁄16 above the inside bid during down markets, the market makers were also engaging in contemporaneous purchase transactions. In fact, during those periods when the market maker exemption was being heavily utilized, the August 1997 Short Sale Study found that the percentage of market maker volume accounted for by exempt short sales was less than the percentage of market maker volume accounted for by stabilizing purchases prior, during, and after peak utilization of the exemption. Thus, as was postulated by the NASD when it proposed the market maker exemption, the August 1997 Short Sale Study shows that market makers have exhibited trading behavior consistent with the notion that the exemption is used as a risk management vehicle to liquidate their long positions amassed during declining markets because of market makers' liquidity enhancing purchases a the bid, not a means to engage in abusive short selling practices that exacerbate downward price movements; and

• Because the exemption was predominantly used during periods when market makers were also engaging in stabilizing purchase transactions, the regression analysis also found that the use of the exemption was in fact associated with slight, positive price movements.

In sum, the August 1997 Short Sale Study found that market makers have used the exemption in a manner consistent with the notion that the exemption serves to enhance their ability to supply immediate, stabilizing liquidity during declining market conditions.

Thus, the NASD believes experience with the Rule since its implementation in September 1994, warrants permanent approval of the Rule and reaffirms the statutory findings made by the Commission when it approved the Rule on a temporary basis. Specifically, the NASD believes experience with the Rule illustrates and substantiates the benefits to investors and to the integrity of Nasdaq that the NASD believed would result from the rule. Namely, that, with the Rule in place, purchasers of NNM securities have greater assurance that they can liquidate their positions in a declining market without predatory short sellers exacerbating downward pressure on stocks and reducing overall liquidity. In sum, the NASD continues to believe that the Rule strikes a reasonable balance between the needs to prevent abusive short selling and reduce the exposure of the Nasdaq market to manipulative and excessive intra-day volatility, on the one hand, and the need to not distort the pricing efficiency and liquidity provided by appropriate short selling activity on the other.

Based on experience with the Rule, the NASD also believes the Rule should be permanently approved in its present form. Specifically, given the geographically dispersed nature of Nasdaq's competing dealer market structure, the NASD continues to believe that it is appropriate for the Rule

[29] The Nasdaq Stock Market Short Sale Rule: Analysis of Market Quality Effects and The Market Maker Exemption, NASD Economic Research Department (August 7, 1997)(''August 1997 Short Sale Study''). As noted above, this Study and the July 1996 Short Sale Study were provided to the SEC under separate letter and are part of this rule filing.

to be based on a ''bid'' test[30] instead of a ''tick'' test,[31] as is the case with Rule 10a–1. When the Rule was first considered by the Commission in 1994, the SEC and commentators expressed concern that structuring the Rule as a ''bid'' test instead of a ''tick'' test could result in the Rule being in effect for longer periods of time in comparison to a ''tick'' test. The SEC also expressed concern that market makers could control the amount of short selling by simply adjusting their bids. Based on the findings of the July 1996 Short Sale Study, however, the NASD believes these concerns are not valid. First, while the July 1996 Short Sale Study clearly found that the Rule is having its intended effect of inhibiting the execution of non-exempt short sales at the bid in a declining market, the July 1996 Short Sale Study also found that market participants are nevertheless readily able to effect short sales at prices slightly above ''down'' bids.[32] Similarly, several market participants interviewed in conjunction with the preparation of the July 1996 Short Sale Study stated that the Rule has not adversely affected their ability to effect short sales, just that it takes them longer to effect such short sales. Second, the July 1996 Short Sale Study's finding that apparent ''unnatural'' quote movements have occurred very infrequently indicates that market makers are not adjusting their quotes to facilitate or constrain short selling activity.[33] Accordingly, the NASD continues to believe that structuring the Rule as a ''bid'' test rather than a ''tick'' test is appropriate given Nasdaq's competing dealer market structure. Moreover, the NASD notes that the SEC's Limit Order Display Rule has substantially increased the ability of non-exempt short sellers to receive executions at prices at least 1/16 of a point above the inside bid in down bid situations, thereby minimizing the impact of the Rule on legitimate short selling activity.[34]

In addition, based on the findings contained in the August 1997 Short Sale Study that use of the market maker exemption has been associated with slight, positive price movements and that market makers are most often relying on the exemption during declining markets when they are engaging in stabilizing purchase transactions, the NASD believes that the market maker exemption should be retained. Without the exemption, the NASD believes market makers will be less able to manage their risk and provide immediate liquidity to the marketplace during declining markets, the very time when liquidity is perhaps most needed to preserve the integrity of the Nasdaq market. The NASD also notes that the July 1996 Short Sale Study found that the amount of exempt short selling occurring at or below the bid is virtually the same in both down-bid and up-bid situations and that market makers do not appear to be adjusting their quotes to constrain or facilitate short selling. Accordingly, the NASD continues to believe that an exemption from the rule for bona fide market making activity by market makers who provide liquidity and continuity to the market is essential for the maintenance of fair and orderly markets on Nasdaq.[35]

The NASD also notes that retention of the Rule has significant competitive implications. Indeed, in the Short Sale Rule Approval Order, the Commission stated that it ''recognizes that without a short sale rule for Nasdaq, the NASD is competitively disadvantaged. The exchange markets can and do attract issuers and investors with the claim that their markets protect against potential short selling abuse.''[36] Given that experience with the Rule over the past two years illustrates that the Rule provides investors and the marketplace with protections against predatory short selling comparable to Rule 10a–1, the NASD believes the competitive disadvantages highlighted by the Commission would become severe if the Rule were not permanently approved. In particular, without permanent approval of the Rule, Nasdaq could potentially lose issuers to other marketplaces simply because those markets have a short sale rule in place, which is very similar to the NASD's Rule. Moreover, aside from these serious competitive concerns, the NASD believes it should be allowed to continue to implement its Rule that affords investors the same protections against abusive short selling activity when trading NNM securities that investors receive when trading exchange-listed securities by virtue of Rule 10a–1.

In this connection, even if the Commission were to conclude that the Rule has had no impact on market quality, the NASD believes the Commission's approval of New York Stock Exchange (''NYSE'') Rule 80A[37] illustrates that the Commission would still have a sufficient basis to approve the Rule on a permanent basis. When NYSE Rule 80A was proposed, the Commission received considerable adverse comment to the effect that there was no causal relationship between index arbitrage and market volatility and that activation of the Rule during turbulent market conditions could have disastrous effects on related options and futures markets and actually exacerbate market volatility. Despite these comments, the Commission approved the proposal on a one-year pilot basis noting that ''the NYSE proposal represents a modest step, proposed on a pilot basis, to attempt to address the issue of market volatility.''[38] After the one year pilot, the NYSE prepared a report that, in the SEC's words, found that ''the standard measures of NYSE market quality appear largely unaffected by Rule 80A.'' Specifically, the NYSE Report indicated that: (1) Quotes on the NYSE did not widen after the 50 DJIA point trigger was reached; and (2) the imposition of Rule 80A did not have any negative effect on price continuity and depth in the market.[39] In addition, in approving Rule 80A on a permanent basis, the SEC noted that the rule ''represents a modest but useful step by the NYSE to attempt to address the issues of market volatility,''[40] that the rule '' has not been disruptive to the marketplace'',[41] and that there was a ''lack of evidence of any harmful effects of Rule 80A.''[42] In sum, the SEC discussion of the statutory basis for

[30] The NASD's Rule is commonly referred to as a ''bid'' test because it is activated based upon movements in the inside bid on Nasdaq.

[31] Rule 10a–1 is commonly referred to as a ''tick'' test because it is activated based on movements in the last sale prices of securities.

[32] *See* July 1996 Short Sale Study, *supra* note 27, at 15–20.

[33] *See id.* at 20–21.

[34] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) [File No. S7–30–95].

[35] The NASD also continues to believe that it is appropriate and consistent with the Act for the Rule to exempt certain qualified market makers while Rule 10a–1 does not provide an exemption for exchange specialists other than the limited exemption continued in Rule 10a–1(e)(6) for specialists on regional exchanges. Specifically, the NASD believes the following differences between the dealer and auction markets warrant the retention of the market maker exemption in the Rule: (1) Exchange specialists have a monopoly over the securities in which they trade; (2)) dealers generally do not have an informational advantage over other dealers; and (3) dealers do not have the ability to close their markets because of sudden volatility or an order imbalance.

[36] Short Sale Rule Approval Order, *supra* note 4, at 34891.

[37] Rule 80A provides that, when the Dow Jones Industrial Average declines or advances by 50 points or more, all index arbitrage orders to sell or buy must be executed in market stabilizing manner.

[38] Securities Exchange Act Release No. 28282 (July 30, 1990), 55 FR 31468, 31472 (August 2, 1990)(order approving File Nos. SR–NYSE–90–5 and 90–11).

[39] Securities Exchange Act Release No. 29854 (October 24, 1991), 56 FR 55963 (October 30, 19991)(order approving file SR–NYSE–91–21)(''Rule 80A Approval Order'').

[40] *Id.* at 55967.

[41] *Id.*

[42] *Id.* at 55967–68.

approval of NYSE Rule 80A focused in large part on the fact that Rule 80A did not have any adverse effects on market quality on the NYSE and that, as a result, the NYSE should be given the latitude to take reasonable steps to address excessive volatility in its marketplace. Accordingly, the NASD believes the SEC should afford the NASD the same regulatory flexibility that it afforded the NYSE and permit the NASD to permanently implement a short sale rule reasonably designed to enhance the quality of Nasdaq and minimize the effects of abusive short selling practices.

The NASD believes the proposed rule change is consistent with sections 15A(b)(6),[43] 15A(b)(9),[44] 15A(b)(11),[45] and 11A of the Act.[46] 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, and to remove impediments to and perfect the mechanism of a free and open market. Specifically, the NASD believes the proposal is consistent with Section 15A(b)(6) of the Act because the proposal is premised on the same anti-manipulation and investor protection concerns that underlie the SEC's own short sale rule, Rule 10a–1. In particular, as with Rule 10a–1, the proposal promotes just and equitable principles of trade by permitting long sellers access to market prices at any time, while constraining the execution of potentially abusive and manipulative short sales at or below the bid in a declining market. In addition, as with Rule 10a–1, the proposal removes impediments to a free and open market for long sellers and helps to assure liquidity at bid prices that might otherwise be usurped by short sellers. Lastly, because the immediate beneficiaries of the proposal are shareholders of NNM companies, the proposal is designed to protect investors and the public interest. At the same time, given that the proposal does not constrain short sales in a raising market or prohibit the execution of short sales in a declining market above bid prices, the NASD believes the proposal does not diminish the important pricing efficiency and liquidity benefits that legitimate short selling activity provides.

Section 15A(b)(9) provides that the Association's rules may not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. While the proposal does impose compliance burdens on market participants and conditions on the execution of short sales in a declining market, the NASD believes these burdens and restrictions are necessary in furtherance of the protection of investors and the integrity of the Nasdaq market. The NASD believes its proposal is consistent with the Act and that any burdens or competition resulting from the proposal do not outweigh the overall benefits to investors that the proposal provides by implementing a short sale rule that is designed; (1) To protect investors and issuers from predatory short selling practices; (2) to reduce the exposure of Nasdaq to manipulation and extreme intra-day volatility; and (3) to afford investors in Nasdaq securities the same protections against abusive short selling that investors in exchange-listed securities presently receive.

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. The NASD believes the proposal prevents misleading quotations and promotes more orderly quotation movements, particularly in a declining market by minimizing the extreme intra-day price volatility associated with abusive short selling activity.

The NASD also believes that the proposal is consistent with the significant national market system objectives contained in Section 11A of the Act. Specifically, Section 11A(a)(1)(C)[47] provides that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure, among other things, (i) the economically efficient execution of securities transactions; (ii) fair competition among brokers and dealers; and (iii) the practicality of brokers executing investors orders in the best market. The NASD believes all of these objectives will be advanced by minimizing the destabilizing influences of abusive short selling activity. Similarly, Section 11A(c)(1)(F)[48] assures the equal regulation of all markets for qualified securities and all exchange members, brokers, and dealers effecting transactions in such securities. The NASD believes its proposal is consistent with Section 11A(c)(1)(F) because approval of the proposal would result in equivalent short sale regulation in the exchange and Nasdaq markets.

In addition, when the SEC proposed new Rule 105 of Regulation M (''Rule 105''), a rule that liberalizes regulatory requirements formerly contained in Rule 10b–21 under the Act (''Rule 10b–21'') governing short sales in connection with a secondary offering, the Commission specifically cited the NASD's adoption of a short sale rule as a factor contributing to the Commission's reassessment of whether Rule 10b–21 should be liberalized. Specifically, the SEC stated:

> Since the adoption of Rule 10b–21, several additional regulatory measures have been implemented that may lessen the effects of short selling in connection with an offering. These initiatives, which include permitting passive market making during offerings of Nasdaq securities and implementing a short sale rule for the Nasdaq market, may reduce the need for Rule 105.'' (Footnote omitted).[49]

On December 20 1997, the SEC adopted its proposed change to Rule 10b–21 in the form of Rule 105.[50] In its release adopting Rule 105, the Commission's analysis does not indicate that the Commission revised its initial belief that implementation of the NASD's Rule, among other factors, lessened the regulatory justification for some of the provisions of former Rule 10b–21.

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. In fact, without a short sale rule for the Nasdaq market, Nasdaq would be adversely affected in its ability to compete for listings with exchange markets and investors on Nasdaq will not be afforded the same protections against abusive short selling as investors on exchange markets. Accordingly, Nasdaq believes approval of the Rule is necessary to ensure that Nasdaq and investors on Nasdaq are not subject to an impermissible burden on competitors.

[43] 15 U.S.C. § 78*o*–3(b)(6) (1994).

[44] 15 U.S.C. § 78*o*–3(b)(9) (1994).

[45] 15 U.S.C. § 78*o*–3(b)(11) (1994).

[46] 15 U.S.C. § 78k–1 (1994).

[47] 15 U.S.C. § 78k–1(a)(1)(C) (1994).

[48] 15 U.S.C. § 78k–1(c)(1)(F) (1994).

[49] Securities Exchange Act Release No. 37094 (April 11, 1996), International Series Release No. 965, 61 FR 17108, 17126 (April 18, 1996) [File No. S7–11–96].

[50] Securities Exchange Act Release No. 38067 (December 20, 1997), International Series Release No. 1039, 62 FR 520 (January 3, 1997) [File No. S7–11–96].

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 date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD 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. People 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 the filing will also be available for inspection and copying at the NASD's principal offices. All submissions should refer to File No. SR–NASD–97–58 and should be submitted by September 24, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[51]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–23343 Filed 9–2–97; 8:45 am]

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[51] 17 CFR 200.30–3(a)(12) (1997).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38973; File No. SR–PCX–97–34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Addition of Martin Luther King, Jr.'s Birthday as an Exchange Holiday and the Renaming of the Decoration Day Holiday to Memorial Day

August 26, 1997.

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 August 20, 1997, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') 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 Exchange. 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 seeks to amend Exchange Rule 4.3 to include Martin Luther King, Jr.'s Birthday among those holidays on which it is closed for business. The Exchange also seeks to amend Exchange Rule 4.3 to change the name of the holiday currently recognized as Decoration Day to its better known name of Memorial Day.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange 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 Exchange 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 Exchange 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 proposed rule change is to modify the Exchange's practice with respect to Exchange holidays to include Martin Luther King, Jr.'s Birthday among those holidays on which the Exchange is not open for business. In addition, the proposed rule change will modify the existing rule to include Memorial Day among the list of holidays, instead of its less commonly used name of Decoration Day.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act, in particular, in that it is designed to promote just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

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

The foregoing rule change is concerned solely with the administration of the Exchange and, therefore, has become effective pursuant to Section 19b(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and