

- (3) Portion of assessment > \$50,000 —
5% additional
(4) Portion of assessment > \$100,000 —
3% [4%] additional.

* * * * *

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 Regulation, Inc. ("NASD Regulation") 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

Pursuant to Article VI of the NASD By-Laws, the NASD requires its members to pay an annual assessment fee, as defined by Schedule A, Section 1. NASD members are required under Section 1(a) of Schedule A to pay an amount equal to the greater of \$1,200.00 or the total of a specified percentage of their annual gross income from securities transactions.² NASD members also receive, pursuant to Section 1(c) of Schedule A, a credit against the annual assessment on their gross income imposed under Section 1(a) of Schedule.

A. The Section 1(c) of Schedule A credit to members is calculated by a tiered discount structure that is intended to address, to some extent, the regulatory subsidy provided by larger NASD firms.

The proposed rule change would amend Section 1(c) of Schedule A to decrease the credit allowed to members against the annual assessment on their gross income by an average of approximately 10%. This reduction in credit allowed to members will result in approximately \$2.8 million of additional revenue in 1997 for the

NASD. This action, based on the current forecast for operating costs and other revenues, should allow the NASD to fund its operating needs and achieve a balanced budget for 1997. The need for this discount rate change results from various factors, including a shortfall in the members' 1996 reported gross revenues subject to this assessment, as well as incremental costs associated with various computer and technology related initiatives and various personnel programs.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,³ which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges in that the proposed rule reasonably provides for an equitable reduction in the tiered discount structure applied to the gross revenue assessment.

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

The NASD does not believe that the proposed rule change will 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

Written comments were neither solicited nor received.

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

The foregoing rule change establishes or changes a due, fee, or other charge and, therefore, has become effective on August 22, 1997, pursuant to Section 19(b)(3)(A)(ii) of the Act⁴ and subparagraph (e) of Rule 19b-4⁵ thereunder. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate the 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 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-97-62 and should be submitted by October 7, 1997.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-24444 Filed 9-15-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39043; File No. SR-NASD-97-10]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Distribution of Information Concerning the Availability of the NASD's Public Disclosure Program

September 10, 1997.

I. Introduction

On February 11, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposal to adopt NASD Rule 2280, "Investor Education and Protection," which will require certain NASD members to provide customers with the following items of information in

² Schedule A, Section 1(a) requires NASD members to pay an amount equal to the greater of \$1,200.00 or the total of: (i) 0.125% of the annual gross revenue from state and municipal securities transactions; (ii) 0.125% of annual gross revenue from other over-the-counter securities transactions; (iii) 0.125% of the annual gross revenue from U.S. Government securities transactions, and; (iv) with respect to members whose books, records, and financial operations are examined by the NASD, 0.125% of annual gross revenue from securities transactions executed on an exchange.

³ 15 U.S.C. 78o-3(b)(5) (1994).

⁴ 15 U.S.C. 78s(b)(3)(A)(ii) (1994).

⁵ 17 CFR 240.19b-4 (1997).

⁶ 17 CFR 200.30-3(a)(12) (1997).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

writing not less than once every calendar year: (1) The NASD Regulation ("NASDR") Public Disclosure Program ("Program") hotline number; (2) the NASDR web site address; and (3) a statement regarding the availability to the customer of an investor brochure that includes information describing the Program.

The proposed rule change was published for comment in the **Federal Register** on February 25, 1997.³ Two comment letters were received regarding the proposal.⁴ On July 31, 1997, the NASD amended its proposal.⁵ This order approves the NASD's proposal, as amended.

II. Description of the Proposal

Under the NASDR's Program, NASDR provides certain information regarding the disciplinary history of NASD members and their associated persons in response to written inquiries, electronic inquiries or telephonic inquiries via NASDR's toll-free telephone listing. At the request of the Honorable Edward J. Markey, the General Accounting Office ("GAO") in 1995 reviewed the effectiveness of the toll-free telephone information service that the NASDR uses to disseminate information under the Program. In its report reviewing the Program, the GAO recommended that NASDR publicize and educate investors about the availability of information through the Program.⁶ Specifically, the GAO recommended that NASDR "explore other ways of publicizing the hotline to a wider audience of investors, such as including the hotline number on account-opening documents or account statements, and making disciplinary-related information directly available to investors through the Internet."⁷

NASD Rule 2280(a) will require NASD members that carry customer accounts to provide customers with the following items of information in writing not less than once every

calendar year: (1) The NASDR Program hotline number; (2) the NASDR web site address; and (3) a statement regarding the availability to the customer of an investor brochure that includes information describing the Program. NASD members may include the required information on customer account statements or in another type of publication. Under NASD Rule 2280(b), members that do not carry customer accounts and do not hold customer funds or securities are exempt from the requirements of NASD Rule 2280(a).⁸

III. Summary of Comments

Two comment letters were received regarding the filing.⁹ Both commenters are introducing brokers that do not carry customer accounts or hold customer funds or securities. The commenters stated that because they do not provide customer account statements or correspond directly with their customers, compliance with the proposal would require a special annual mailing that would impose significant costs on their firms. In particular, MML argued that it would spend approximately \$1 million annually to comply with the proposal.¹⁰ In response to the commenters' concerns, the NASD indicated that it would advise the commenters that they could comply with the proposal by providing information about the Program to the customer at the time of the customer's purchase.¹¹ Amendment No. 1, which exempts from the rule brokers that do not carry customer accounts and do not hold customer funds or securities, supersedes the NASD's June 18 Letter.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and, in particular, with the requirements of Section 15A(b)(6)¹² and 15A(i).¹³ Section 15A(b)(6) requires, in part, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. Section 15A(i) requires the NASD to: (1) Establish and

maintain a toll-free telephone listing to receiving inquiries regarding disciplinary actions involving the NASD's members and their associated persons; and (2) promptly respond to such inquiries in writing. By requiring broker-dealers that carry customer accounts to provide customers, at least once each calendar year, with written information regarding the NASDR Program hotline number, the NASDR's web site address, and a statement regarding the availability of an investor brochure describing the Program, the proposal will help to publicize the availability of the NASDR's Program and may increase investor use of the Program. As a result of increased investor use of the Program, a greater number of investors will obtain information about the disciplinary histories of NASD members and their associated persons. This information will help investors determine whether to conduct, or to continue to conduct, business with a NASD member or associated person of the member.

The Commission finds that Amendment No. 1 to the proposal is reasonable and consistent with the Act. Amendment No. 1 exempts from the proposal brokers that do not carry customer accounts and do not hold customer funds or securities. The Commission believes that it is reasonable to exempt such brokers from the proposal because, according to the commenters, the proposal's requirements would impose significant costs on such brokers. In addition, the Commission understands that the customers of brokers that do not carry customer accounts and do not hold customer funds or securities will receive the information required under the proposal from a clearing broker or from the broker that carries the customer's account.¹⁴

The Commission finds good cause for approving Amendment No. 1 the proposal prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, the Commission finds that Amendment No. 1 strengthens the NASD's proposal by ensuring that the proposal does not impose prohibitive expenses on broker-dealers that do not carry customer accounts and do not hold customer funds or securities.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No.

³ See Securities Exchange Act Release No. 39291 (February 14, 1997), 62 FR 8477.

⁴ See Letter from Daniel D. McConnell, Executive Vice President, PFS Investments, Inc., to Jonathan G. Katz, Secretary, SEC (May 14, 1997) ("PFS Letter"); Letter from Michael A. Kerley, Vice President and Chief Legal Officer, MML Investors Services, Inc., to Jonathan G. Katz, Secretary, SEC (March 14, 1997) ("MML Letter").

⁵ See Letter from Craig L. Landauer, NASDR, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), SEC (July 31, 1997) ("Amendment No. 1"). Amendment No. 1 exempts from the requirements of the proposal NASD members that do not carry customer accounts and do not hold customer funds or securities.

⁶ See GAO, *NASD Telephone Hotline: Enhancements Could Help Investors Be Better Informed About Brokers' Disciplinary Records* (August 1996) ("GAO Report").

⁷ *Id.* at 18.

⁸ See Amendment No. 1, *supra* note 5.

⁹ See PFS Letter and MML Letter, *supra* note 4.

¹⁰ See MML Letter, *supra* note 4.

¹¹ See Letter from Craig L. Landauer, Associate General Counsel, NASDR, to Katherine A. England, Assistant Director, Division, SEC (June 18, 1997) ("June 18 Letter").

¹² 15 U.S.C. 78o-3(b)(6) (1988).

¹³ 15 U.S.C. 78o-3(i) (1988 & Supp. 1992). In approving the rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁴ Telephone conversation among John Ramsey, NASDR, and Craig Landauer, Associate General Counsel, NASDR, and Katherine England, Assistant Director, Division, Commission, and Yvonne Fraticelli, Attorney, Division, Commission, on September 9, 1997.

1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-97-10 and should be submitted by October 7, 1997.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-NASD-97-10), as amended, is approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-24542 Filed 9-15-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39036; File No. SR-NYSE-97-10]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to Rule 104.10(5) Relating to Specialists Establishing a Position in Specialty Stocks

September 9, 1997.

I. Introduction

On March 25, 1997, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4 thereunder,² the proposed rule change to permit specialists to engage in certain types of transactions by removing existing restrictions that currently limit

the ability of specialists to engage in such transactions when establishing or increasing a position in their specialty stocks.³ Notice of filing appeared in the **Federal Register** on May 12, 1997.⁴ No comment letters were received concerning the proposed rule change. This order approves the NYSE's proposal.

II. Description of the Proposal

The NYSE, pursuant to Rule 19b-4 of the Act, proposes to amend NYSE Rule 104.10(5)(i) to remove certain restrictions on specialists' ability to establish or increase their positions in their specialty stocks.

Purpose

NYSE Rule 104 governs specialists' dealings in their specialty stocks. In particular, NYSE Rule 104.10(5)(i) describes certain types of transactions to establish or increase a specialist's position which are not to be effected unless they are "reasonably necessary to render the specialist's position adequate to" the needs of the market. Additionally, these types of transactions require floor official approval unless they are conducted in "less active markets" where such transactions are an essential part of a proper course of dealings and where the amount of stock involved and the price change, if any, are normal in relation to the market.⁵ Currently, such restrictions apply equally to transactions that are beneficial to the market by being against the market trend. The Exchange is proposing to apply these restrictions only to those transactions that are disadvantageous to the market by being with the market trend.

Specifically, the revision to NYSE Rule 104.10(5)(i)(B) would continue to prohibit a specialist from establishing or increasing his or her long position by purchasing more than 50% of the stock offered for sale in the market on a zero-plus tick (i.e., at a price equal to the last sale and above the previous different price sale).⁶ There would no longer, however, exist an express restriction on purchasing stock on a zero-minus tick to establish or increase a position. The NYSE believes that purchases on zero-minus ticks are against the market trend and are perceived as being beneficial to the market.⁷

³ See Securities Exchange Act Release No. 38574 (May 5, 1997).

⁴ 62 FR 25984 (May 12, 1997).

⁵ See NYSE Rule 104.10(5)(i).

⁶ A plus tick is a price above the price of the last preceding sale.

⁷ A minus tick is a price below the price of the last preceding sale.

Paragraph (C) of NYSE Rule 104.10(5)(i) would be deleted to permit a specialist to establish or increase his or her short position by selling stock to the bid without restriction on a zero-plus tick. The NYSE believes that these transactions are beneficial to the market by being against the market trend in nature. Short sales on zero-minus ticks will continue to be prohibited pursuant to SEC Rule 10a-1 under the Act and Exchange Rule 440B.⁸

The proposed amendments are intended to enhance the specialist's ability to deal for his or her own account to provide support to the market. Under the proposed rule change, specialists will, to a greater degree, be able to counter the market trend in a stock through effecting proprietary transactions that are against the market trend. The NYSE believes that in today's markets, characterized by increased volatility and institutional activity, the use of dealer capital in this fashion can add liquidity in a manner beneficial to the market.

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.⁹ The Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principals of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest, promote efficiency, competition and capital formation.¹⁰ The Commission also believes that the proposal is consistent with Section 11(b) of the Act and Rule 11b-1 thereunder,¹¹ which allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.

Both the Act and NYSE Rules reflect the crucial role played by specialists in

⁸ Long sales on zero-minus ticks would not be deemed "to establish or increase a position." Rather, such sales are deemed liquidating transactions and are addressed by NYSE Rule 104.10(6). See Securities Exchange Act Release No. 31797 (January 29, 1993) 58 FR 7277 (February 5, 1993) (approval order permitting specialists to "reliquify" a dealer position by selling long on a zero-minus tick or by purchasing to cover a short position on a zero-plus tick without Floor Official approval).

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78(c).

¹¹ 15 U.S.C. 78k and 17 CFR 240.11b-1(a)(2).

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.