

imbalance. In conjunction with the prohibition on canceling or modifying any MOC/LOC order after 3:40 p.m. the Commission believes that this requirement should allow the specialist to make a timely and reliable assessment, for every Amex-listed stock, of MOC/LOC order flow and its potential impact on closing prices.

Further, the proposal would require Amex specialists to publish order imbalances of 25,000 shares or more as close to 3:40 p.m. as practicable. In addition, under certain circumstances, order imbalances of less than 25,000 shares may be published as close to 3:40 p.m. as practicable with the approval of a Floor Official. The Commission believes that permitting order imbalance publications even though the imbalance is under 25,000 shares should give specialists needed flexibility to balance order flow where the specialist believes that it may be necessary to attract contra-side interest. With respect to changing the deadline for entering MOC orders on non-expiration days, the Commission believes that, by giving market participants more time to react to published MOC order imbalances, the proposal may contribute to reducing volatility at the close.¹⁶

Finally, the Exchange proposes to apply the order imbalance dissemination requirements at the opening of trading as well as at the close. Specifically, as discussed above, the Exchange will require order imbalances of 25,000 shares or more to be disseminated before 9:30 a.m. Circumstances under which an imbalance of less than 25,000 shares would be published will apply to the opening as well.¹⁷ The Commission believes that requiring order imbalances to be published prior to the opening may help reduce volatility at the opening as well as at the close of improving the specialists' ability to accurately assess opening order flow, and attract contra-side interest to help alleviate order imbalances. Further, the policy should help provide the investing public with more timely and reliable information regarding likely opening and closing prices, and thus the ability to make more informed trading decision.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the

¹⁶ As discussed above, LOC orders will be subject to the same deadlines for order entry as MOC orders.

¹⁷ As discussed above and in Amendment No. 1, the Commission notes that the Exchange will not apply the order entry procedures used for the close of trading to the opening of trading. See Amendment No. 1, *supra* note 3.

thirtieth day after the date of publication of notice of filing of this amendment in the **Federal Register**. Amendment No. 1 clarifies the proposal to indicate what the deadline is for order imbalance publications at the opening. In addition, Amendment No. 1 clarifies that MOC/LOC order entry procedures will not apply to the opening of trading. As a result, the Commission does not believe that Amendment No. 1 raises any new regulatory issues. Further, the Commission notes that the original proposal was published for the full 21-day comment period and no comments were received by the Commission. Accordingly, the Commission believes there is good cause, consistent with Sections 6(b)(5) and 19(b)¹⁸ of the Act, to approve Amendment No. 1 to the Exchange's proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether it is consistent with the Act. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-AMEX-98-10 and should be submitted by July 23, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁹ that the proposed rule change (SR-AMEX-98-10) is approved as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

¹⁸ 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78s(b).

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40124; File No. SR-NASD-98-42]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Extension of Effectiveness of the Pilot Injunctive Relief Rule

June 24, 1998.

Pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 12, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by NASD Regulation, Inc. ("NASD Regulation"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rule 10335 of the Code of Arbitration ("Code") of the NASD to extend the pilot injunctive relief rule for six months. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

10335. Injunctions

* * * * *

(i) Effective Date

This Rule shall apply to arbitration claims filed on or after January 3, 1996. Except as otherwise provided in this Rule, the remaining provisions of the Code shall apply to proceedings instituted under this Rule. This Rule shall expire on [July 3, 1998] *January 3, 1999*, unless extended by the Association's Board of Governors.

¹ 15 U.S.C. 78s(b)(1) (1994).

² 17 CFR 240.19b-4 (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, NASD Regulation 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 III below. 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

The NASD's injunctive relief rule, Rule 10335 of the Code, provides a procedure for obtaining injunctive relief in arbitration and for expediting proceedings for injunctive relief in intra-industry disputes. Rule 10335 became effective on January 3, 1996, for a one-year pilot period.³ The initial pilot period was subsequently extended twice by the Commission to permit NASD Regulation's Office of Dispute Resolution to gain additional experience with the rule before determining whether the rule should be made permanent, the pilot period should be extended or the rule should be permitted to terminate by its terms.⁴ The rule is currently due to expire on July 3, 1998.

NASD Regulation is currently developing a proposed rule change to amend Rule 10335 and make it a permanent part of the Code. NASD Regulation anticipates filing this proposed rule change by July 17, 1998. The purpose of the requested six-month extension of the existing injunctive relief rule is to maintain the rule's effectiveness pending filing of and Commission action on that proposed rule change.

(b) Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁵ which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to

promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the current pilot injunctive relief rule serves the public interest by enhancing the satisfaction with the arbitration process afforded by expeditious resolution of certain disputes. The NASD also believes that it is in the interest of members that the effectiveness of the rule remains uninterrupted pending Commission action on the permanent proposed rule change.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation 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, as amended.

(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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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 the file number SR-NASD-98-42 and should be submitted by July 23, 1998.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

NASD Regulation has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act⁶

for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. To avoid interruption of the pilot injunctive relief rule, 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 association and, in particular, the requirements of Section 15A(b)(6) of the Act.⁷ Rule 10335 is intended to provide a pilot system within the NASD arbitration forum to process requests for temporary injunctive relief. Rule 10335 is intended principally to facilitate the disposition of employment disputes, and related disputes, concerning members who file for injunctive relief to prevent registered representatives from transferring their client accounts to their new firms. The Commission finds it is appropriate to extend the pilot for six months to avoid interruption of the pilot injunctive relief rule. During that time the NASD Regulation will be able to evaluate the success of Rule 10335 and adequately review comments received. The Commission expects the NASD to submit a proposed rule change to add Rule 10355 to the Code on a permanent basis in the near future.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate because members will continue to have the benefit of injunctive relief in arbitration without interruption. The Commission is extending the pilot for six months. During that time NASD Regulation will submit a proposed rule change to amend Rule 10335 to make it a permanent part of the Code. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is consistent with Section 15A of the Act.⁸

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change be, and hereby is, approved on an accelerated basis for a six month pilot basis through January 3, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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⁷ 15 U.S.C. 78o-3(b)(6).

⁸ 15 U.S.C. 78o(b)(2).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

³ Securities and Exchange Act Release No. 36145 (August 23, 1995), 60 FR 45200 (Aug. 30, 1995).

⁴ Securities and Exchange Act Release No. 38069 (December 20, 1996), 61 FR 68806 (December 30, 1996), and Securities and Exchange Act Release No. 39458 (December 17, 1997), 62 FR 67423 (December 24, 1997).

⁵ 15 U.S.C. 78o-3.

⁶ 15 U.S.C. 78s(b)(2).