

thereunder.⁷ Section 6(b) of the Act states that the rules of an exchange must be designed to facilitate securities transactions and to remove impediments to and perfect the mechanism of a free and open market. The Commission believes that permitting the Exchange to allow the Chairman of the Committee, or the Chairman's designee, to exercise the authority of the Committee to determine the size of orders eligible for entry into RAES will help to expedite the execution of orders for more than 10 contracts, which should free market makers to handle more complex or larger orders that are not RAES eligible. The Commission believes that EFPC review of decisions to increase the size of orders eligible for entry into RAES for consecutive days will help to ensure that the Chairman or his or her designee only uses the discretion in those limited circumstances set forth in the Interpretation.

Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-CBOE-98-37) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40745; File No. SR-NASD-09-75]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. Requiring Certain NASD Member Firms To Participate in the Integrated, Industry-Wide, Year 2000 Tests

December 3, 1998.

On December 3, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), submitted to the Securities and

Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4 thereunder,² Amendment No. 1 to a proposed rule change described in Items I, II, and III below, which Items have been prepared by NASD Regulation.³ The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposal and Amendment No. 1 thereto.

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

NASD Regulation proposes to add a new rule, NASD Rule 3410, to the Conduct Rules of the National Association of Securities Dealers, Inc. ("NASD" or "Association"), to require certain NASD members to conduct or participate in computer tests designed to address the Year 2000 problem. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

3400. COMPUTER SYSTEMS

3410. Mandatory Year 2000 Testing

[This rule will expire automatically on January 1, 2001]

(a) Members of the Association that determine their minimum net capital requirement according to paragraphs (a)(2)(i) and/or (a)(4) of Securities Exchange Act Rule 15c3-1, or are registered with the Securities and Exchange Commission as government securities brokers or dealers under Section 15C of the Securities Exchange Act of 1934 must conduct or participate in such testing of computer systems as the Association may prescribe.

(b) Every member required by the Association to conduct or participate in testing of computer systems shall provide to the Association such reports relating to the testing as the Association may prescribe.

(c) Every member of the Association that clears securities transactions on behalf of other broker-dealers must take reasonable measures to ensure that each broker-dealer for which it clears securities transactions conducts testing with such member.

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

In its filing with the Commission, 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 IV 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

(a) Purpose

The NASD is proposing to adopt a rule that would establish with NASD's specific authority to require certain members to participate in Year 2000 tests and to require reporting on the tests.⁴ The NASD is proposing that the rule will expire in the year 2001 so that the NASD will have specific authority to mandate testing and reporting, as necessary, to correct problems that are not resolved prior to January 1, 2000, or to collect problems that arise after January 1, 2000.

On January 1, 2000, the internal date in computers should roll-over from "12/31/99" to "01/01/00." At that moment, if corrective measures have not been taken, the program logic in the vast majority of these computer systems will begin to produce erroneous results because the systems will read the date as beginning in the year 1900 rather than 2000. This problem, known as the "Year 2000 Problem," could cause significant disruption in the securities industry. There are several stages involved in correcting the Year 2000 Problem, including: assessing the problem; implementing corrective measures; conducting internal, point-to-point, and integrated or industry-wide testing; and establishing contingency plans.

The testing stage of correcting the Year 2000 Problem will be critical to ensuring that the markets will operate with minimal disruption after January 1, 2000. To facilitate testing on an

⁴ The proposed rule is not intended to limit the NASD's existing authority by rule, contract, or otherwise, to mandate testing or require reports from members. For example, the Nasdaq Workstation II® Subscriber Agreement, Section 1 states that Nasdaq agrees to provide services to a subscriber on the terms and conditions set forth in the agreement, which could include testing.

⁷ In approving this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The initial filing, which was received on October 5, 1998, was not noticed in the **Federal Register**.

integrated, industry-wide basis, the Securities Industry Association ("SIA") has undertaken the task of coordinating such a test. Test participants will include, among others, Nasdaq, the exchanges, registered clearing corporations and depositories, data processors, and broker-dealers. The first day of the integrated, industry-wide test is scheduled for March 6, 1999.⁵

The NASD believes it is essential that the firms that could cause the most disruption in the market, if these firms have not corrected the Year 2000 problem, conduct tests of all of their critical computer systems that relate to their different types of businesses (e.g., equities, options, government securities, mortgage-backed securities). Consequently, the NASD is proposing to require all market makers and clearing firms to conduct tests to address the Year 2000 Problem. The proposed rule also would require government securities brokers or dealers that are not subject to the SEC's net capital rule, but are NASD members, to conduct Year 2000 tests.

Some firms will be able to satisfy at least part of their testing obligations by participating in the SIA-coordinated test or by tests sponsored by self-regulatory organizations ("SROs"). The Government Securities Clearing Corporation ("GSCC") will test for government securities. In addition, the Participants Trust Company ("PTC") and the MBS Clearing Corporation ("MBSCC") will test for mortgage-backed securities. Therefore, portions of the members' testing obligations will be satisfied by participation in the tests offered by GSCC, PTC, or MBSCC.

The proposed rule would provide specific authority to require participation in organized, industry-sponsored tests, and require "point-to-point" testing between member firms and the NASD or other systems, or internal tests of member systems. These other tests may be particularly significant for smaller market makers and clearing firms that may not be able to participate in the industry-sponsored tests.

Some members may be able to satisfy their testing obligation without actually conducting tests themselves. For example, it is likely that market makers that are not clearing firms and that only use Nasdaq Workstation II® (NWII) terminals for their market-making activity will not be required to participate in mandatory testing because the NASD has completed testing of the

NWII system. Also, members that use computer systems provided by service bureaus are not likely to have to perform any additional tests of the systems provided by the service bureaus if the service bureaus participate in the SIA coordinated test, the members have conducted point-to-point testing with their service bureaus, the service bureaus have conducted point-to-point testing with the NASD, and the tests do not indicate any problems. In the circumstances described above, the NASD and service bureaus will act as proxies for the members for purposes of compliance with the rule. Following approval of this rule proposal and Amendment No. 1 thereto, the NASD will issue a Notice to Members describing the types of tests that will be required for different types of market makers and clearing firms, and the types of situations in which members will be able to satisfy the testing requirement by proxy.

The NASD also believes that test results should be reported to the Association. These reports will enable the NASD to identify those members that have not adequately prepared for the Year 2000 so that appropriate action can be taken to address these members' deficiencies, including, for example, providing assistance to or easing the transition of business to other firms. Accordingly, the proposal would require members to file reports with the NASD about the tests. To simplify the reporting requirement, the NASD will design a standardized format firms will use to report to the NASD. In addition, to avoid duplicative and burdensome reporting, the NASD will coordinate its reporting requirements with other SROs as much as possible. For example, the NASD may exclude from its reporting requirement those firms for which the NASD is not the designated examining authority.

The NASD will issue Notices to Members specifying members' reporting and testing obligations sufficiently in advance of specific events, such as SIA-coordinated industry-wide tests, that members will reasonably be able to comply. Regardless of when such Notices are issued, nothing in this rule relieves member firms of their obligation to take all necessary steps so that they may function properly—both their internal systems and their ability to communicate and transact business with other firms—on and after January 1, 2000.

Further, although the NASD is not proposing to require all members of the Association (e.g., introducing firms that do not make markets) to conduct external testing, such testing is a key

element of Year 2000 compliance for all firms.⁶ Specifically, the NASD still wants all member firms to test their computer systems and take whatever remedial measures are necessary to deal with Year 2000 issues. NASD Regulation staff has held 35 Year 2000 seminars in 14 cities and has been told by introducing firms that their computer systems are dependent upon, and in some cases provided by, their clearing firms and that cooperation by and coordination with the clearing firms is necessary. Based on these comments, the NASD is proposing that clearing firms must take reasonable measures to ensure that their introducing firms test with them. The NASD expects that "reasonable measures" in this context would include providing reasonable notice of the existence of tests that are scheduled as well as such access to the systems and personnel of the clearing firm as may be necessary. The NASD wants clearing firms to give it the results of the tests conducted with the introducing firms.

Finally, there is no more significant issue confronting the financial industry than the Year 2000 Problem, and the NASD thus will respond decisively to members' failure to respond to initiatives designed to determine their readiness. The NASD informed members that failure to respond to the NASD Year 2000 survey could result in disciplinary action. Similarly, disciplinary actions have been and will be instituted against members that fail to file SEC Form BD-Y2K. In addition, members will be subject to disciplinary action if they fail to conduct the required tests, fail to report the results of the tests to the NASD, or fail to take reasonable measures to ensure that their introducing firms have an opportunity to test with them.

(b) Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and

⁵The exact number of firms that will be able to participate in the SIA test has not been conclusively determined.

⁶Member firms that choose—or are required—to participate in external testing should recognize that internal testing is a prerequisite for external testing and participation in SIA-coordinated tests and should act accordingly.

open market and a national market system, and, in general, to protect investors and the public interest. NASD Regulation believes the proposed rule is necessary to protect investors and the public interest. The NASD rule requiring certain members to conduct or participate in Year 2000 tests, and to file reports about the tests, will enable NASD Regulation, those participating in the tests, and others to evaluate the readiness of securities industry for the Year 2000. The firms that would be required to conduct testing perform critical functions in the markets and these firms' inability to perform these functions beyond January 1, 2000 could cause disruptions in the markets and cause harm to investors.

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

After careful consideration, the Commission has concluded, for the reasons set forth below, that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder. Mandating Year 2000 testing and reporting is consistent with Section 15A(b)(6)⁷ of the Exchange Act. Section 15A(b)(6) of the Exchange Act requires that the NASD's rules be designed, among other things, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change will facilitate the NASD's efforts to ensure the securities markets' continued smooth operation on and after January 1, 2000.

The Commission finds good cause for approving the proposal and Amendment

No. 1 thereto prior to the 30th day after the date of publication of notice of the filing in the **Federal Register**. It is vital that SROs have the authority to mandate that their member firms participate in Year 2000 testing and that they report test results (and other Year 2000 information) to their SRO's. The proposed rule change will help the NASD participate in coordinating industry-wide and other testing. This, in turn, will help ensure that the SIA's tests and the NASD's Year 2000 efforts are successful. The proposed rule change will also help the NASD work with its member firms, the SIA, and other SROs to minimize any possible disruptions the Year 2000 may cause.

IV. 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 Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference 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 in the caption above and should be submitted by December 31, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,⁸ that the proposal, SR-NASD-98-75, including Amendment No. 1 thereto, be and hereby is approved on an accelerated basis.⁹

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

⁸ 15 U.S.C. 78s(b)(2).

⁹ In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

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

DATES: Comments should be submitted on or before February 8, 1999.

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

SUPPLEMENTARY INFORMATION:

Title: "Supplemental Loan Guarantee Agreement".

Type of Request: New Collection.

Form No.: SBA Form 1918.

Description of Respondents: SBA Express Lenders.

Annual Responses: 200.

Annual Burden: 50.

Title: "SBA Express Borrower Information".

Type of Request: New Collection.

Form No.: SBA Form 1919.

Description of Respondents: Proprietor, Partner, Holder with 20% or more voting stock of a corporate.

Annual Responses: 12,000.

Annual Burden: 1,000.

Title: "Request for SBA Express Loan Number".

Type of Request: New Collection.

Form No.: SBA Form 1920.

Description of Respondents: SBA Express Lenders.

Annual Responses: 10,000.

Annual Burden: 833.

Title: "Lender Checklist for PLP/SBA Express, Notification and Request".

Type of Request: New Collection.

Form No.: SBA Form 2091.

Description of Respondents: SBA Express Lenders.

Annual Responses: 10,000.

Annual Burden: 833.

Title: "Eligibility Information Required for SBA Express Submission".

Type of Request: New Collection.

Form No.: SBA Form 2092.

Description of Respondents: SBA Express Lenders.

Annual Responses: 10,000.

⁷ 15 U.S.C. 78o-3(b)(6).