Week of January 19—Tentative

Wednesday, January 21

10:00 a.m.

Briefing on Operating Reactors and Fuel Facilities, (Public Meeting), (Contact: William Dean, 301–415–1726)

2:00 p.m.

Briefing on Material Control of Generally License Devices, (Public Meeting), (Contact: Larry Camper, 301–415–7231)

3:30 p.m.

Affirmation Session, (Public Meeting)

Friday, January 23

9:30 a.m.

Discussion of Interagency Issues (Closed—Ex. 9)

Week of January 26—Tentative

Wednesday, January 28

11:30 a.m.

Affirmation Session (Public Meeting), (if needed)

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

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The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: December 31, 1997.

William M. Hill, Jr.,

Secy Tracking Officer, Office of the Secretary.

[FR Doc. 98–462 Filed 1–5–98; 12:55 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 39490, File No. SR–NASD–97–50]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change By the NASD To Extend From 15 Seconds to 17 Seconds the Amount of Time a Market Maker Has To Update Its Quote After an Order Execution in SOES Before Being Required To Execute a Subsequent Order

December 24, 1997.

On July 14, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder.[2] The proposal amends NASD Rule 4730(b)(1) to indicate that once the Nasdaq Stock Market, Inc.'s (''Nasdaq'') Small Order Execution System (''SOES'') executes an unpreferenced market order or a marketable limit order against a SOES market maker, that market maker is not required to execute another unpreferenced SOES order at the same bid or offer in the same security until 17 seconds have elapsed, absent a quotation update by the market maker within such 17-second period. On July 24, 1997, notice of the proposed rule change, including the substance of the proposal, was published for comment in the **Federal Register**.[3] The Commission received 64 comment letters, which are discussed below. The Commission is hereby approving the proposed rule change.

I. Description

The proposed rule change specifies the obligations of SOES market makers during non-locked and non-crossed market situations. As amended, NASD Rule 4730(b)(1) would provide that once SOES executes an unpreferenced market order or a marketable limit order against a SOES market maker, that market maker is not required to execute another unpreferenced SOES order at the same bid or offer in the same security until 17 seconds have elapsed, absent a quotation update by the market maker within that 17-second period.

Currently, NASD Rule 4730(b)(1) provides that:

> Market Makers shall have a period of time following their receipt of an execution report in which to update their quotation in the security in question before being required to execute another unpreferenced order at the same bid or offer in the same security. This period of time shall initially be established as 15 seconds, but may be modified upon appropriate notification to SOES participants.

This language was originally added to the NASD's rules in October 1991 to give a SOES market maker a brief opportunity to update its quotations in response to executions it received through SOES (''15-Second SOES Execution Response Period''). As the current language of NASD Rule 4730(b) reflects, the ''15-Second SOES Execution Response Period'' commences when a market maker has received notification of a SOES execution through the system.[4] Because SOES does not have the capability to determine the exact time when a market maker receives a SOES execution report, at the time this rule was implemented Nasdaq estimated that it took up to five seconds for SOES to execute an order against a market maker and for the market maker to receive a report of the execution (the ''SOES Execution Report Communication Period''). As a result, SOES was programmed to add uniformly a five-second period to the ''15-Second SOES Execution Response Period,'' with the effect that the system executes unpreferenced market orders against a market maker in twenty-second intervals, absent a quotation update by the market maker.

Nasdaq now estimates that on average, the SOES Execution Report Communication Period is between two and three seconds, although the actual time may vary depending on activity and communications traffic during different periods of the day. Based on this data, the NASD determined that it was appropriate to assign a two-second period to the SOES Execution Report Communications Period for purposes of the rule.

The NASD proposes to incorporate explicitly this two-second period into NASD Rule 4730. The proposed rule change is designed to retain the ability of a market maker to respond to SOES executions while recognizing that,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 38849 (July 17, 1997) 62 FR 39883 (July 24, 1997).

[4] *See* Exchange Act Release No. 29810 (October 10, 1991) 56 FR 52098, 52099 (October 17, 1991) (order approving file no. SR–NASD–91–18) (''[f]ollowing receipt of an execution report of an unpreferenced purchase or sale through SOES, a market maker will have a period of time (15 seconds) to update its quote prior to executing any subsequent transaction on the same side of the market at the same price.'' [Footnote omitted].).

under normal circumstnaces, a minimal period of time is necessary for reports of those executions to be received by the market maker. The proposed amendments to NASD Rule 4730(b) also would clarify that:

(1) A market maker becomes immediately eligible to receive another execution through SOES if it updates its quote (its bid, offer, or size) during the 17-second period,[5] and

(2) The 17-second period arises regardless of whether the market maker executes an unpreferenced market order or an unpreferenced marketable limit order.

This rule change is intended to eliminate ambiguities in Nasdaq's implementation of this rule and among market participants concerning the manner in which unpreferenced orders are executed in SOES.

II. Summary of Comments

The Commission received 64 comment letters from the public. Of these, 58 letters concerned other NASD filings, and thus were irrelevant and one comment letter was submitted twice. Of the five remaining comment letters, three were in favor of the proposed rule change and two were against it. None of these comment letters contained any reason for the positions taken.

III. Discussion

The Commission finds the proposed rule change, by helping to ensure that market makers stand willing to buy and sell securities at all times, is consistent with the Exchange Act and in particular with Sections 15A(b)(6), 15A(b)(9), 15A(b)(11) and 11A(a)(1)(C) of the Exchange Act.

Among other things, Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities. Section 15A(b)(6) also requires that the rules of a national securities association be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Section 15A(b)(9) provides that the rules of the association may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 15A(b)(11) requires the NASD, as an association, 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, distributing, and publishing quotations. Section 11A(a)(1)(C) provides that, among other things, it is in the public interest to assure the economically efficient execution of securities transactions and the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

The Commission believes that the proposed amendments will help to ensure that a market maker has no more time than necessary after execution—*i.e.*, 17 seconds—before it must update its quotes. This requirement will help ensure that a market maker cannot attempt to avoid its market making obligations by waiting a lengthy period of time after a SOES execution before entering an updated quote.[6] As a result, the proposed rule change should increase a market maker's compliance with its obligation to make continuous, two-sided markets and promote quote competition among market makers. Such competition among market makers should, in turn, enhance the integrity of the Nasdaq market by helping to ensure the best execution of customer orders and improving the price discovery process for Nasdaq securities.

The Commission also notes that the NASD filed the proposed rule change in response to concerns about the rule the Commission raised in its *Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and the Nasdaq Market* (''SEC Report''). In relevant part, the SEC Report notes that the

October 1991 SOES rule amendments as filed with the Commission also allowed for the modification of the SOES operating software to provide for a fifteen-second delay between executions by a particular market maker. The purpose of this delay was to give the SOES market maker an opportunity to update its quotations after receiving a report of a trade executed through SOES. In fact, the NASD implemented an effective delay of twenty seconds, which reduced the ability of SOES users to obtain executions.[7] The purported rationale for the additional five-second delay was to allow for the time taken for the electronic transmission of execution reports and quote updates. According to internal NASD studies, however, any delays in transmission occurred only at the opening of busy trading days and the vast majority of any such delays were no more than two to three seconds in length. The NASD should have set forth in its filings with the Commission seeking approval for the delay that the time between executions had been set at twenty seconds, but did not do so. The existence of the additional five second delay was discovered by the Commission staff during the investigation [that led to the issuance of the SEC Report].[8]

The proposed rule change addresses the concerns of the SEC Report by clearly establishing the time delay between SOES executions against a market maker. Moreover, the delay includes, in addition to the previously established 15-second period, only the time measured by the NASD for electronic transmission of an execution report.

Thus, the proposal to change NASD Rule 4730 is consistent with the Exchange Act and in particular with the following sections of that Act:

(1) Section 15A(b)(6), because it is designed to prevent a market maker from failing to meet its obligation to make a continuous, two-sided market;

(2) Section 11A(a)(1)(C)(i)–(iii), because it assures: economically efficient execution of securities transactions; fair competition among brokers and dealers by encouraging timely, fair, and accurate quotations; and the availability to brokers, dealers, and investors of timely information concerning these fair and accurate quotations.

Further, the proposed change to NASD Rule 4370 is consistent with Section 15A(b)(9) of the Exchange Act, because it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, but merely alters, slightly, a timing requirement for market makers.

Finally, the Commission believes that the proposal is consistent with Exchange Act Section 15A(b)(11). In particular, by helping to ensure that

[5] The proposed amendments to NASD Rule 4730(b) do not change in any way the current functionality of SOES whereby preferenced orders are continuously executed against a market maker without any delay between executions. In addition, as is presently the case during locked and crossed markets, SOES will execute orders (both preferenced and unpreferenced against a market maker that is locked or crossed in five second intervals. *See* NASD Rule 4730(b)(3).

[6] A market maker that can avoid updating its quote for a period of time can take advantage of its temporary ability to avoid SOES executions and wait to see how other market makers update their quotes. This delay could serve to lessen competition among market makers.

[7] The Release by the Commission approving the proposed rule changes explicitly noted that the delay function was set at fifteen seconds and stated that ''[a]ny change in the time period must be submitted to the Commission for review pursuant to Section 19(b) of the [Exchange] Act.'' Exchange Act Release No. 29810 (October 10, 1991) 56 FR 52098 (October 17, 1991) n.10. The NASD had never made any such submission. (This footnote conforms to footnote 160 in the Appendix to the SEC Report.)

[8] Appendix to SEC Report at A–62–63.

SOES market makers update their quotes promptly after executions, the proposal should help to produce fair and informative quotations and prevent fictitious and misleading quotations.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (SR–NASD–97–50) be, and hereby is, approved.[9]

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–290 Filed 1–6–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39497; File No. SR–NYSE–97–28]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending Exchange Rule 431 to Establish Margin and Net Capital Requirements for Joint Back Office Arrangements

December 29, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 2, 1997, the New York Stock Exchange, Inc. (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') 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 parties.

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

The Exchange seeks to amend Exchange Rule 431, ''Margin Requirements.'' The modifications relate to: (a) joint back office (''JBO'') arrangements, (b) margin requirements for broker-dealer accounts, (c) margin requirements for specialists' and market makers' accounts, and (d) control and restricted securities.

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

In April, 1996, the Exchange established the Rule 431 Committee (''the Committee'') to review all aspects of Rule 431 and make recommendations to the Exchange in the wake of recent changes to federal margin regulations and changing industry conditions. The Committee created various subcommittees to review specific provisions of Rule 431 utilizing the expertise of industry representatives knowledgeable in the application of Rule 431. As a result of the efforts of the ''Control Stock'' and ''Joint Back Office'' subcommittees, and reviews by the Committee and Exchange staff, the Exchange Board approved amendments to Rule 431 as set forth below.

(a) JBO Arrangements

Regulation T, issued by the Board of Governors of the Federal Reserve System (''FRB''), permits a broker-dealer to ''effect or finance transactions of any of its owners if the [broker-dealer] is a clearing and serving broker or dealer owned jointly or individually by other [broker-dealers].''[2] The proposed rule change would provide certain regulatory requirements for establishing and maintaining such JBO arrangements. Carrying/clearing broker-dealer forming a JBO would be required to: (i) provide written notification to the Exchange prior to establishing a JBO, (ii) maintain minimum tentative net capital[3] of $25 million, or maintain minimum net capital of $10 million if engaged in the primary business of clearing options market-maker accounts,[4] (iii) maintain a written risk analysis methodology for assessing the amount of credit extended to participating broker-dealers, and (iv) deduct from net capital, the ''haircut'' requirements pursuant to the Commission's Net Capital Rule (''Rule 15c3–1'')[5] in excess of the equity maintained in the accounts of participating broker-dealers.

Furthermore, under the proposal JBO participants must be registered broker-dealers subject to Rule 15c3–1, and will be required to maintain an ownership interest in the JBO pursuant to Regulation T. Exclusive of their ownership interest in the JBO arrangement, JBO participants must maintain a minimum liquidating equity of $1 million. If the liquidating equity falls below $1 million, the JBO participant must eliminate the deficiency within five business days or become subject to the margin requirements under other provisions of Exchange Rule 431.[6]

(b) Margin Requirements for Broker-Dealer Accounts

Currently, the amount of any deficiency between the equity maintained in the proprietary account carried for another broker-dealer and the maintenance margin required by Exchange Rule 431(c)(1) (*i.e.*, 25% of the current market value of securities ''long'' in the account) is deducted in computing the net capital of the carrying member organization. In order for introducing broker-dealers to receive the same treatment as proposed for JBO

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[9] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. The proposed rule change likely will enhance the efficiency and fairness of the process by which market makers update their quotes. It likely also will enhance the ability of investors to obtain updated market maker quotes quickly, thus increasing Nasdaq's transparency. The net effect of approving the proposed rule change will be positive. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 12 CFR 220.11. Regulation T is titled ''Credit By Brokers and Dealers'' and was issued by the FRB pursuant to the Act.

[3] As discussed in the Exchange's Interpretation Handbook, the term ''tentative net capital'' generally refers to net capital before the application of ''haircuts'' (*infra* note 5) and undue concentration charges on securities and options positions. *See* NYSE Interpretation Handbook, Section I(c)(2)(vi)(M)(04), ''Tentative net Capital.''

[4] Under the proposed rule change, clearance of option market maker accounts would be deemed a broker-dealer's primary business if a minimum of 60% of the aggregate deductions in the ratio of gross options market maker deductions to net capital (including gross deductions for JBO participant accounts) are options market maker deductions.

[5] 17 CFR 240.15c3–1 *et seq.*, ''Net Capital Requirements for Brokers or Dealers.'' Rule 15c3–1 requires a broker-dealer to reduce its net worth by certain percentages, known as ''haircuts,'' of the market value of its securities positions.

[6] The Exchange believes that in order to establish an effective, industry-wide regulatory scheme for JBO arrangements, the other self-regulatory organizations should adopt the requirements in the proposed rule change that relate to JBO arrangements.