

clarification that the 30-second window applied only to electronic orders on the same side of the market in a security. On November 20, 2002, the Amex Board authorized revisions to Rule 128A to reduce the speed bump to 10 seconds (less than the 15 second window that is standard at options exchanges) and to clarify that the new, 10 second, window only applies to orders on the same side of the market in a security. The Exchange believes that it has addressed the concerns articulated by the member organization.

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

The foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate. The proposed rule change has therefore become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

The Amex has requested that the Commission waive the usual five-day notice and 30-day pre-operative waiting periods. The Commission believes that it is consistent with the protection of investors and the public interest to accelerate the operative date and to waive the five-day notice period so that the pilot can continue without the 30-day delay. Thus, the Commission waives the five-day notice period and designates that the proposal become operative immediately.¹⁵ The pilot extension will expire June 19, 2003.

At any time within 60 days of the filing of this 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.¹⁶

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 Act.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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 Section. 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-2002-99 and should be submitted by January 27, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47103; File No. SR-NASD-2002-180]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding the Prohibition Against Guarantees and Sharing in Customer Accounts

December 30, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 18, 2002, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

NASD is proposing to amend Rule 2330(e) to clarify that members and their associated persons are prohibited from guaranteeing any customer against loss in connection with any securities transaction or in any securities account of such customer. In addition, NASD is proposing that associated persons obtain written authorization from their employing member firm and the customer prior to sharing in a customer's account under Rule 2330(f). The proposed rule change to Rule 2330(f) also deletes the requirement that members and associated persons obtain the written authorization of the member carrying the account prior to sharing in a customer's account. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

A. 2330. Customers' Securities or Funds

(a) Through (d) No Change.

(e) Prohibition Against Guarantees

No member or person associated with a member shall guarantee a customer against loss in *connection with* any securities [account] *transaction or in any securities account* of such customer [carried by the member or in any securities transaction effected by the member with or for such customer].

(f) Sharing in Accounts: Extent Permissible

(1)(A) Except as provided in paragraph (f)(2) no member or person associated with a member shall share directly or indirectly in the profits or losses in any account of a customer carried by the member or any other member; provided, however, that a member or person associated with a member may share in the profits or losses in such an account if (i) such [member or] person associated with a member obtains prior written authorization from the member [carrying the account] *employing the associated person*; (ii) *such member or person associated with a member obtains prior written authorization from the customer*; and (iii) [the] *such member or person associated with a member [shall] shares in the profits or losses in any account of such customer only in direct proportion to the financial contributions made to such account by either the member or person associated with a member.*

(B) Exempt from the direct proportionate share limitation of

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁶ 17 CFR 240.19b-4(f)(6).