

terms, or by an official interpretation of the NASD, to a specific time period outside of the 4 p.m. to 6:30 p.m. time period. This obligation applies with particular force to the requirement to protect customer limit orders set forth in NASD IM-2110-2.

- The NASD's Short Sale Rule (NASD Rule 3350) will not apply during the after-hours session.

Nasdaq staff will continue to initiate trading halts,¹¹ and adjudicate clearly erroneous trade disputes in the after-hours session, using the same standards and methods as employed during traditional market hours.¹²

Nasdaq believes the transparency and investor protection benefits resulting from the availability of Nasdaq's systems and facilities after the traditional trading day have proven their worth and should now become permanent.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,¹³ in general, and with Section 15A(b)(6) of the Act,¹⁴ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

Nasdaq 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.

¹¹ Nasdaq notes that this trading halt authority will be limited to individual stocks only and will be undertaken in consultation with other markets operating after 4:00 p.m. Eastern Time. Market-wide trading halt rules currently in effect rely solely on percentage-based declines in the Dow Jones Industrial Average ("DJIA"), which is not calculated after the 4:00 p.m. close. In the event that a circuit breaker halt, triggered during regular market hours, prevents a normal close of U.S. primary markets, there will be no after-hours trading session that day.

¹² As during the pilot period, NASD Regulation, Inc. ("NASD Regulation") is of the view that nothing in the instant proposal modifies or limits an NASD member's obligation to comply with the rules of NASD Regulation's Order Audit Trail System ("OATS") when reporting trading activity taking place between 4:00 p.m. and 6:30 p.m. Eastern Time.

¹³ 15 U.S.C. 78o-3.

¹⁴ 15 U.S.C. 78o-3(b)(6).

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

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and

- (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶ At any time within 60 days of the filing of the 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.

Nasdaq has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes waiving the five-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow Nasdaq's after-hours trading program to operate without interruption. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹⁷

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 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).

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-2003-14 and should be submitted by March 4, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,
Deputy Secretary.

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Securities and Exchange Commission

[Release No. 34-47307; File No. SR-NASD-2002-134]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change Relating to Exemptions from Options Position and Exercise Limits

February 3, 2003.

I. Introduction

On October 1, 2002, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and rule 19b-4 thereunder,² a proposed rule change to amend NASD rule 2860(b)(3)(A) by eliminating options position and exercise limits for positions entered into under certain enumerated hedge strategies and establishing position and exercise limits of five times the standard limit for certain of those strategies when they include an over-the-counter (OTC) option contract. On December 23, 2002, the NASD filed Amendment No. 1 to the proposed rule change.³ The proposed

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Gary L. Goldsholle, Associate General Counsel, Office of General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 20, 2003 ("Amendment No. 1"). In Amendment No. 1, the