Commission agrees that the BBO service would not resolve all capacity issues related to options market data, it believes that the BBO service is a first step in addressing these concerns. Finally, the Commission notes that this service is an alternative to the current OPRA full service. Accordingly, for any options series that a vendor chooses to disseminate market data, the vendor could disseminate last sale information together with (i) the best bid and offer from each market, as the vendor agreement currently requires, or (ii) the BBO. The Commission believes that OPRA's proposal to permit vendors to disseminate last sale information and a BBO is consistent with the purposes of Section 11A of the Act because the BBO would include the essential pricing information market participants need to make informed investment decisions. Moreover, the BBO would not impede market competition because all markets have an equal opportunity to be represented in the BBO. The Commission believes that OPRA's proposed BBO service would make it easier for vendors to disseminate this minimum essential market information as an alternative to the full quotation information or in addition to such information.

The Boston Stock Exchange, Inc. (''BSE'') offered support for the proposal in general but criticized the priority used to determine the market identifier.[25] Specifically, the BSE suggested that the proposal could discourage competition by creating a disincentive for market makers to improve the price of their quotations. In particular, BSE argued that because the market identifier for the BBO could change based solely on an increase to the size of the BBO, OPRA's service would likely identify only those exchanges that disseminate quotations with large size. As a result, BSE suggested that order flow providers would direct their orders to exchanges that improve the size but merely match the price of the BBO, thereby creating a disincentive for an exchange to offer a better price as means of attracting order flow.

The Commission is not persuaded by BSE's arguments. An exchange would have its market identifier associated with the BBO by improving the price. Therefore, the Commission believes that the proposal would give market makers an incentive to improve either the price or the size of a quote, or both. Further, the Commission notes that most disseminated quotations in the options market are updated automatically in direct response to changes in the price of the underlying security. Thus, the Commission believes that in many instances a better quote results not from a market maker's incentive to be first in time to establish the best bid or offer but, rather, from a price change in the underlying security. For this reason, the Commission is not persuaded by the BSE's argument that OPRA's proposal to calculate the best bid or offer in the options market on the basis of price and then size priority.

BSE also suggested that the method proposed to calculate the BBO was unclear under the guidelines. The Commission believes that the changes to the proposal in Amendments No. 1 and 2 provide adequate clarification as to how the BBO would be calculated.[26]

Finally, the Commission also believes that the proposal is consistent with the Commission's position in its letter submitted as *amicus curiae* in an arbitration proceeding between OPRA and Reuters.[27] In this arbitration, OPRA challenged the validity of Reuters' limited service under which it provides only the last sale and quotation information for each options class generated by the ''primary market,'' defined as the market with the greatest volume for the prior month. The Commission submitted its views on whether Reuters' dissemination to customers of options prices only from the exchange with the highest volume is consistent with the OPRA Plan and the Act, particularly the goals of fostering transparency and competition. The Commission concluded it was not.

Specifically, the Commission took the position that the dissemination by securities information vendors of timely, accurate, and complete options quotation and transaction information to market participants, including public investors, is a critical component of the national market system as it relates to options. Accordingly, as the Commission urged in its *amicus* letter, this means that the market information disseminated by a vendor must include, at a minimum, for each series of options included in its service, the last sale information generated by all exchanges and the best bid and offer currently available in the marketplace.

The Commission believes that it is appropriate to approve the proposal summarily upon publication of notice of Amendments No. 1 and 2 to permit OPRA to complete the system modifications necessary to offer the BBO service to vendors and subscribers, along with the anticipated capacity savings, which the BBO service should provide, at the soonest practicable time.

V. Conclusion

It is therefore ordered, pursuant to section 11A of the Act,[28] and rule 11Aa3–2(c)(4) thereunder,[29] that the proposed OPRA Plan amendment, as modified by Amendments No. 1 and 2, (SR–OPRA–2002–01) is approved until April 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–32072 Filed 12–19–02; 8:45 am]

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[25] The BSE also raised concerns regarding firm quote obligations in the options markets generally. The Commission believes that these obligations are outside the scope of OPRA's function and are not relevant to the proposed amendment to the OPRA Plan.

[26] *See* Amendments No. 1 and 2, *supra* notes 1 and 2. *See* also, OPRA letter, *supra* note 7.

[27] *See* letter to Tamara B. Young, Case Administrator, American Arbitration Association, from Annette L. Nazareth, Director, Division, Commission, and David M. Becker, General Counsel, Commission, dated February 5, 2001.

[28] 15 U.S.C. 78k–1.

[29] 17 CFR 240.11Aa3–2(c)(4).

[30] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46994; File No. SR–NASD–2002–66]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change Relating to Limit Order Protection and the Facilitation of Other Customer Orders on a Riskless Principal Basis

December 13, 2002.

I. Introduction

On May 28, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), 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 that would modify NASD Interpretative Material 2110–2 to establish a riskless principal customer facilitation exemption. Notice of the proposed rule change appeared in the **Federal Register**

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

[2] 17 CFR 240.19b–4.

on June 7, 2002.[3] The Commission received two comment letters in response to the proposed rule change.[4] On November 26, 2002, Nasdaq submitted Amendment No. 1 to the proposed rule change.[5] For the reasons discussed below, the Commission is approving the proposed rule change and granting accelerated approval to Amendment No 1.

II. Description of the Proposed Rule Change

The proposed rule change seeks Commission approval of Nasdaq's proposal to establish a riskless principal customer facilitation exemption to NASD Interpretative Material 2110–2– Trading Ahead of Customer Limit Order (''Manning Interpretation'' or ''Manning''). NASD's current Manning Interpretation prohibits market makers from trading at prices equal or superior to customer limit orders they hold without executing those limit orders.[6]

Nasdaq has determined to adopt a customer facilitation exemption to Manning that would exempt from Manning single-priced riskless principal transactions done by market makers who are buying or selling securities to satisfy the order(s) of other customers. In these situations, since the true beneficiary of the market maker's activity is another customer, and not the firm's proprietary account, Manning will be interpreted to exempt such trading from being considered triggering trades obligating the market maker to protect other held customer limit orders.[7] Additionally, this proposed exemption is intended to addresses some of the consequences created by Manning's minimum price improvement standard in a decimal environment.

To ensure that market maker transactions that will not trigger Manning obligations are being done for the ultimate benefit of other customers, the customer facilitation exemption will be strictly construed. As such, only those market maker trades meeting all of the following requirements would be eligible for an exemption from Manning:

(1) The handling and execution of the facilitated order must satisfy the definition of a ''riskless'' principal transaction, as that term is defined in NASD Rules 4632(d)(3)(B), 4642(d)(3)(B) and 4652(d)(3)(B);

(2) A member that relies on this exemption to this interpretation must give the facilitated order the same per-share price at which the member accumulated or sold shares to satisfy the facilitated order, exclusive of any markup or markdown, commission equivalent or other fee;

(3) A member must submit, contemporaneously with the execution of the facilitated order, a report as defined in NASD Rules 4632(d)(3)(B)(ii), 4642(d)(3)(B)(ii) and 4652(d)(3)(B)(ii) to the Automated Confirmation Transaction Service;

(4) Members must have written policies and procedures to assure that riskless principal transactions relied upon for this exemption comply with NASD Rules 4632(d)(3)(B), 4642(d)(3)(B) and 4652(d)(3)(B). At a minimum these policies and procedures must require that the customer order was received prior to the offsetting transactions, and that the offsetting transactions are allocated to a riskless principal or customer account within 60 seconds of execution. Members must have supervisory systems in place that produce records that enable the member and NASD Regulation to accurately and readily reconstruct, in a time-sequenced manner, all orders on which a member relies in claiming this exemption.

Non-agency trades not meeting all of these standards would remain subject to Manning and require, upon execution, the protection and execution of appropriate limit orders in full conformity with the Interpretation. This exemption would apply only to the actual number of shares executed by the member necessary to fill the customer order(s).

In Nasdaq's view, a transaction meeting these requirements is closely akin to an agency trade and does not materially implicate a market maker's proprietary trading. Nasdaq notes that the Commission in its release concerning the availability of the section 28(e) safe harbor also highlighted the similarities in compensation transparency provided by agency and riskless principal trade reporting pursuant to NASD Rules 4632(d)(3)(B), 4642(d)(3)(B), and 6420(d)(3)(B), coupled with the requirements of Exchange Act Rule 10b–10.[8] As such, Nasdaq will not consider riskless principal trades meeting the requirements of the exemption as triggering trades for the market maker's own market-making account for purposes of Manning. This view rests primarily on the requirement that only trades where a market maker gives the customer a trade price that reflects the market maker's actual cost in acquiring the stock be eligible for the exemption. This obligation to trade 'flat' effectively removes concerns about a member breaching its fiduciary duty to customer limit orders that it holds that underlie the Manning protections in other trading contexts. Nasdaq believes that the above exemption draws an appropriate balance between the important customer protections afforded by Manning and the practical needs of market participants to assist other customers.

III. Comment Letters

The Commission received two comment letters in response to the proposed rule change. Knight Trading Group, Inc. (''Knight'') supported the proposed rule change but expressed concern about the conditions included in the exemption. In particular, Knight objected to the requirements that an offsetting riskless principal transaction must be allocated within 60 seconds of execution and that the transaction be allocated to a separate ''allocation account.'' Knight contended that these requirements were redundant in light of the proposed condition that members must have systems in place that enable a member to accurately and readily reconstruct, in a time sequenced manner, all orders upon which a member relies in claiming the exemption.

Another commenter, Schwab Capital Markets L.P. (''Schwab''), expressed a broader concern about the application of the Manning Interpretation in a decimals environment where subpenny quotes are rounded to the nearest penny. Schwab stated that under certain market conditions, a member may attempt to execute a trade at least $0.01 ahead of a customer limit order it holds pursuant to Manning but because a quote was rounded to the nearest penny the execution may trigger a fill of a customer limit order held by the member. Schwab suggested several solutions to the problem, including requiring an asterisk identifier to a rounded quote and the elimination of a penny price improvement standard

[3] *See* Securities Exchange Act Release No. 46006 (May 30, 2002), 67 FR 39455 (June 7, 2002).

[4] Letters from Michael T. Dorsey, Senior Vice President, Director of Legislative and Regulatory Affairs, Knight Trading Group, Inc. (June 28, 2002); Michael Corrao, Vice President and Chief Compliance officer, Schwab Capital Markets L.P. (July 9, 2002).

[5] *See* Letter from Thomas P. Moran, Associate General Counsel, Nasdaq (November 26, 2002). NASD's Amendment seeks to add the language ''or customer account'' to the proposed rule language for subparagraph (c) (4) of Interpretative Material 2110–2 as an alternative account to which a riskless principal offsetting transaction may be allocated in addition to the ''riskless principal account'' referenced in the original rule filing.

[6] In addition, Nasdaq has adopted price-improvement standards that obligate market makers to execute held customer limit orders unless the market maker either buys at a price sufficiently higher than a customer's buy order, or sells at a price sufficiently lower than a customer's sell order.

[7] In this sense, the exemption is similar in purpose and effect to the treatment of agency executions in IM–2110–2. Specifically, if a broker-dealer executes a customer order on an agency basis, the firm is not required to protect (execute) other customer limit orders.

[8] *See* Securities Exchange Act Release No. 45194 (January 2, 2002), 67 FR 6 (January 2, 2002).

where the spread in a security is a penny.

Nasdaq submitted Amendment No. 1 in response to one of the concerns raised by Knight. As discussed, Amendment No. 1 seeks to provide an alternative allocation account for those members for whom it may be cumbersome to establish a separate ''riskless principal account.'' With regards to Knight's concern about the requirement that an offsetting transaction be allocated to either a riskless principal or customer account within 60 seconds, Nasdaq has not sought to make any changes to the proposed rule in response to this concern as this condition is consistent with previously stated Nasdaq policy regarding the handling of mixed capacity trades and compliance with the Manning Interpretation.[9]

Further, Nasdaq has not sought any changes to the rule proposal in response to the concerns raised by Schwab. The issues raised by Schwab largely relate to the operation of Manning relative to the rounding of quotes to the nearest penny due to subpenny trading that are beyond the scope of the proposed rule change.

IV. Discussion

The Commission has reviewed carefully the proposed rule change and the two comment letters and finds that the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder.[10] Specifically, the Commission finds that approval of the proposed rule change is consistent with section 15A(b)(6) of the Act.[11]

The Commission finds that proposed rule change is consistent with section 15A(b)(6) of the Act [12] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and 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 finds the proposed rule change promotes the just and equitable principles of trade by continuing to provide protection to customer limit orders while removing possible impediments to filling customer orders on a riskless principal basis. In particular, the Commission finds that an exemption from Manning for single-priced riskless principal transactions done by market makers who are buying or selling securities to satisfy the order(s) of other customers is consistent with the goals of Manning since the true beneficiary of the market maker's activity is another customer and not the firm's proprietary account. Additionally, we believe the proposed exemption will appropriately address some of the concerns raised by members regarding the consequences created by Manning's minimum price improvement standard in a decimal environment.

The Commission also finds good cause for approving proposed Amendment No. 1 prior to the 30th day after the date of publication of notice of the filing in the **Federal Register**. The Amendment provides an alternative allocation account, other than a riskless principal account, as a more efficient means of complying with the conditions of the exemption for some members for whom establishing a separate riskless principal account may be cumbersome. Approving the Amendment on an accelerated basis will allow some members to implement the exemption without having to unnecessarily establish a separate riskless principal account. For this reason, the Commission finds good cause for accelerating approval of the proposed rule change, as amended.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether the Amendment 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to file number SR–NASD–2002–66 and should be submitted by January 10, 2003.

V. Conclusion

For the above reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, in general, and with section 15A(b)(6),[13] in particular.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NASD–2002–66), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–32073 Filed 12–19–02; 8:45 am]

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[9] *See* NASD Notice to Members 01–85, at Question 7 and Notice to Members 95–67, at Question 5.

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

[11] 15 U.S.C. 78o–3(b)(6).

[12] *Id.*

[13] 15 U.S.C. 78o–3(b)(6).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4234]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Devonshire Inheritance: Five Centuries of Collecting at Chatsworth''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.),* Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''The Devonshire Inheritance: Five Centuries of Collecting at Chatsworth,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at Dixon Gallery and Gardens, Memphis, TN from on or about April 24, 2003, to on or about August 17, 2003, at Bard Graduate Center for Studies in the Decorative Arts, New York, NY from on or about March 10, 2004 to on or about June 20, 2004, at Peabody Essex Museum, Salem, MA from on or about August 14, 2004 to on or about November 7, 2004, at the Society of the Four Arts, Palm Beach, FL from on or about December 7, 2004 to