

professional traders who determine to send electronically generated orders would, thus, be able to avoid violations by inputting two keystrokes or by inputting one touch of a computer screen. Consequently, the proposed interpretation provides some leeway for the Exchange to determine what constitutes minimal human intervention.

The Exchange will be willing to provide interpretive guidance to its members in order to help them determine what type of action will be deemed to be minimal human intervention and what type of activity will not be considered minimal human intervention. The Exchange will also be willing to provide advice to its members about whether a particular surveillance mechanism to detect violations of this Rule by its customers is adequate.

2. Statutory Basis

The proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act⁹ in that it is designed to remove impediments to a free and open market and protecting investors and the public interest.

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

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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 CBOE. All submissions should refer to the File Number SR-CBOE-00-57 and should be submitted by January 2, 2001.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-31387 Filed 12-8-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43654; File No. SR-NASD-00-70]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Extension of the Effective Date of Phase Three for Order Audit Trail System Rules

December 1, 2000.

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 November 30, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") 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 Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NASD Regulation proposes to amend Rule 6957 to extend the effective date of the implementation of Phase Three of the Order Audit Trail System ("OATS") rules until 120 days after the SEC approves File No. SR-NASD-00-23,³ which also proposes changes to the OATS rules. The text of the proposed rule change is available at the Office of the Secretary, NASD Regulation and 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, 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

1. Purpose

On March 6, 1998, the SEC approved NASD OATS Rules 6950 through 6957.⁴ OATS provides a substantially enhanced body of information regarding orders and transactions that improves NASD Regulation's ability to conduct surveillance and investigations of member firms for violations of Association rules. In addition, OATS is intended to fulfill one of the undertakings contained in the order issued by the SEC relating to the settlement of an enforcement action against the NASD for failure to adequately enforce its rules.⁵ Pursuant to the SEC Order, OATS is required, at

³ See Exchange Act Release No. 43344 (September 26, 2000), 65 FR 59038 (October 3, 2000).

⁴ See Exchange Act Release No. 39729, 63 FR 12559 (March 13, 1998) (order approving File No. SR-NASD-97-56).

⁵ See In the Matter of National Association of Securities Dealers, Inc., Exchange Act Release No. 37538 (August 8, 1996); Administrative Proceeding File No. 3-9056 ("SEC Order").

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁹ 15 U.S.C. 78f(b)(5).

a minimum, to (1) provide an accurate, time-sequenced record of orders and transactions, beginning with the receipt of an order at the first point of contact between the broker/dealer and customer or counterparty and further documenting the life of the order through the process of execution, and (2) provide for market-wide synchronization of clocks used in connection with the audit trail.⁶

In general, OATS imposes obligations on member firms to record in electronic form and to report to NASD Regulation certain information with respect to orders originated, received, transmitted, modified, canceled, or executed ("reportable events") by NASD members relating to a Nasdaq Stock Market, Inc. ("Nasdaq") equity security. This information is integrated with quote information and transaction information reported to the Automated Confirmation Transaction Service ("Act")⁷ to provide the Association with an accurate, time-sequenced record of orders and other transactions.

The effective dates for OATS requirements are set forth in NASD Rule 6957, which provides for different phases of implementation. All members were required to synchronize their computer system clocks and all mechanical clocks that record times for regulatory purposes by August 7, 1998, and July 1, 1999, respectively. In addition, the implementation schedule required that electronic orders received at the trading department of a member that is a market maker in the subject securities and those received by electronic communications networks ("ECNs") be entered into OATS as of March 1, 1999 ("Phase One"). Not all information relating to electronic orders received by market makers was required to be reported to OATS during Phase One. Information items relating to all electronic orders, however, was required to be reported to OATS by August 1, 1999 ("Phase Two"). Under the current implementation schedule, the OATS rules will apply to all manual orders on December 15, 2000 ("Phase Three").⁸

Since the implementation of OATS, NASD Regulation has been closely reviewing OATS activities with the goal of identifying ways in which to improve

OATS and enhance the effectiveness of OATS as a regulatory tool. In this regard, NASD Regulation has proposed certain changes to OATS that it believes will enhance NASD Regulation's automated surveillance for compliance with trading and market making rules such as the NASD's Limit order Protection Interpretation, the SEC's Order Handling Rules, and a member firm's best execution obligations.⁹

Several of these proposed changes would alter the requirements that will become effective as part of Phase Three under current OATS Rules. For example, one proposed change would require that a different order origination and receipt time be recorded and reported for certain orders. Another proposed amendment would change the definition of reporting member, which would eliminate OATS reporting requirements for certain firms. To provide adequate time for these proposed changes to be considered and potentially acted upon, NASD Regulation is proposing that the effective date of Phase Three implementation be 120 days after the SEC approves File No. SR-NASD-00-23.¹⁰ NASD Regulation believes that by linking the effective date of Phase Three to SEC approval of pending proposed changes to OATS rules, members will be provided sufficient time to implement internal systems programming and other changes resulting from the rule change.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹¹ which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that extending the effective date of Phase Three implementation of OATS will provide the additional time necessary to fully analyze and consider the proposed

changes to OATS rules and determine whether the proposed rule changes are appropriate.

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 Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

NASD Regulation has neither solicited nor received written comments on the proposed rule change.

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

Pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder,¹³ the proposed rule change has become effective upon filing as it effects a change that: (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 for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest. NASD Regulation provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date and has requested that the Commission accelerate the operative date of the proposal to become effective immediately.

The Commission finds good cause for accelerating the operative date of the proposal as of the date of this notice.¹⁴ In order to prevent unnecessary systems changes, NASD Regulation needs to give its members as much notice as possible that the effective date of Phase Three has been extended. The Commission also notes that the previous proposal to extend the implementation date of Phase Three from October 31, 2000 to December 15, 2000 did not become operative for 30 days from the date of filing, and the Commission received no comments.¹⁵

⁹ See *supra* note 3.

¹⁰ In response to the **Federal Register** publication of SR-NASD-00-23, some commenters indicated that members would require 90 days from the date the OATS Technical Specifications are amended to incorporate necessary systems changes resulting from SEC approval of SR-NASD-00-23. In this regard, NASD Regulation believes that the OATS Technical Specifications will be amended within 30 days of SEC approval of SR-NASD-00-23. Accordingly, NASD Regulation believes that 120 days after the date of SEC approval of SR-NASD-00-23 should provide adequate time for the OATS Technical Specifications to be amended and published, and for members to make necessary systems and programming changes.

¹¹ 15 U.S.C. 78o-3(b)(6).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.16b-4(f)(6).

¹⁴ 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).

¹⁵ See *supra* note 8.

⁶ *Id.*

⁷ ACT is an automated system owned and operated by Nasdaq that captures transaction information in real-time.

⁸ On August 31, 2000, NASD Regulation filed a proposed amendment with the Commission for immediate effectiveness to extend the implementation date of Phase Three from October 31, 2000 to December 15, 2000. See Exchange Act Release No. 43263 (September 8, 2000), 65 FR 55661 (September 14, 2000).

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.

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, N.W., Washington D.C. 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 the NASD. All submissions should refer to File No. SR-NASD-00-70 and should be submitted by January 2, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-31384 Filed 12-8-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43647; File No. SR-NYSE-00-52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Extend the Pilot Regarding Shareholder Approval of Stock Option Plans Through February 28, 2001

November 30, 2000.

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 November 29, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is proposing to extend, until February 28, 2001, the effectiveness of the amendments to Sections 312.01, 312.03 and 312.04 of the Exchange's Listed Company Manual with respect to the definition of a "broadly-based" stock option plan, which were approved by the Commission on a pilot basis ("Pilot") on June 4, 1999.³

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

On July 12, 2000, the Exchange filed a proposed rule change seeking to extend the effectiveness of the Pilot until September 30, 2003.⁴ On August 15, 2000, the Commission, in response to a commenter's request, extended the comment period for the 3-Year Extension Proposal until September 20, 2000.⁵ On September 22, 2000, the Pilot

was extended through November 30, 2000 to accommodate the extended comment period on the 3-Year Extension Proposal.⁶

The Exchange now proposes to further extend the effectiveness of the Pilot until February 28, 2001 to provide the Commission and the Exchange with additional time to review and evaluate comment letters submitted to the Commission regarding the 3-Year Extension Proposal.

2. Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5)⁷ of the Act because it is 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 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.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Because the 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) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section

period was schedule to expire on August 31, 2000. See 3-Year Extension Proposal, *supra* note 4.

⁶ Securities Exchange Act Release No. 43329, 65 FR 58833 (October 2, 2000).

⁷ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 41479, 64 FR 31667 (June 11, 1999).

⁴ Securities Exchange Act Release No. 43111 (August 2, 2000), 65 FR 49046 (August 10, 2000) ("3-Year Extension Proposal").

⁵ Securities Exchange Act Release No. 43155, 65 FR 49046 (August 23, 2000). The original comment

¹⁶ 17 CFR 200.30-3(a)(12).