

requirements of Section 6(b).<sup>3</sup> Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect fraudulent and manipulative acts, and, in general, to protect investors and the public interest.<sup>4</sup>

On September 6, 1996, the Commission adopted new Rule 11Ac1-4 ("Display Rule"), which requires OTC market makers and specialists to display the price and full size of customer limit orders when these orders represent buying and selling interest that is at a better price than a specialist's or OTC market maker's public quote. Moreover, the Display Rule requires OTC market makers and specialists to increase the size of the quote for a particular security to reflect a limit order of greater than *de minimis* size when the limit order is priced equal to the specialist's or OTC market maker's disseminated quote and that quote is equal to the national best bid or offer.<sup>5</sup>

Currently, the Exchange has its own limit order exposure policy, which is set forth in Interpretation .01, Rule 12.10 of the CSE's rules. The Exchange believes that with the adoption of the Display Rule, the requirements in CSE's limit order exposure policy have become obsolete. The Exchange, therefore, proposes to delete these requirements and insert a reference to the Display Rule. The Commission finds that eliminating the current Exchange requirements for exposure of limit orders and referencing the Commission's rule is appropriate and will assist CSE members to comply with the new obligations for handling limit orders under the federal securities laws.

Based on the above, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act, to accelerate approval of the proposed rule change prior to the 30th day of the publication of this notice in the Federal Register. Moreover, the Commission believes that it is appropriate to accelerate approval of the proposed rule change so that the Exchange may accurately reflect in its rules by January 20, 1997, the effective date of the Order Handling Rules, the new obligations of its members.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change (SR-CSE-97-020) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

Jonathan G. Katz,  
Secretary.

[FR Doc. 97-1680 Filed 1-23-97; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-38180; File No. SR-NASD-96-50]

**Self-Regulatory Organizations;  
National Association of Securities  
Dealers, Inc.; Order Granting  
Accelerated Temporary Approval and  
Notice of Filing and Accelerated  
Approval of Amendment No. 1 of  
Proposed Rule Change Relating to  
Amendments to the NASD's Excess  
Spread Rule Applicable to Market  
Maker Quotations Through July 1, 1997**

January 16, 1997.

**I. Introduction**

On December 16, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> The NASD proposed to amend NASD Rule 4613(d) on a pilot basis through January 31, 1998, to provide that a registered market maker in a security listed on The Nasdaq Stock Market ("Nasdaq") shall be precluded from being a registered market maker in that issue for twenty business days if its average spread in the security over the course of any full calendar month exceeds 150 percent of the average of all dealer spreads in such issue for the month.<sup>3</sup>

Notice of the proposed rule change was published in the Federal Register.<sup>4</sup> No comments have been received in response to the Commission release.

Subsequent to publication of the NASD filing, on January 9, 1997, the NASD filed with the Commission Amendment No. 1, which proposes to shorten the length of the pilot period

from January 31, 1998, to July 1, 1997.<sup>5</sup> This order approves the proposed rule change, including Amendment No. 1, on an accelerated basis.

**II. Description**

NASD Rule 4613(d), which is commonly known as the NASD's "excess spread rule," presently provides that registered market makers in Nasdaq securities shall not enter quotations that exceed the NASD's parameter for maximum allowable spreads. Specifically, the rule provides that the maximum allowable spread for any Nasdaq security is 125 percent of the average of the three narrowest market maker spreads in that issue ("125 percent test"), provided, however, that the maximum allowable spread shall never be less than 1/4 of a point.<sup>6</sup>

In its filing with the Commission, the NASD stated that the proposed rule change is an attempt to strike a reasonable balance between the need to eliminate any disincentive that the excess spread rule places on firms to improve their quotations and the need to avoid fostering a market environment where registered market makers can maintain inordinately wide spreads and still receive the benefits of market maker status. Under the amendment, a registered market maker will be required to maintain an average spread over the course of any full calendar month equal to or less than 150 percent of the average spread of all market makers in the issue over the course of the month ("150 percent test"). If a market maker fails to satisfy this standard with respect to a particular Nasdaq security, it will be forced to withdraw from market making in that issue for at least 20 business days.

Amended Rule 4613(d) will afford market makers that opportunity to request reconsideration of their withdrawal notices. Requests for reconsideration will be reviewed by the Market Operations Review Committee, whose decisions will be final and

<sup>5</sup> See Letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to David Oestreicher, Esq., Division of Market Regulation, SEC, dated January 8, 1997. A copy of this amendment is available for inspection and copying in the Commission's Public Reference Room.

<sup>6</sup> Unrelated to the excess spread rule, there is also a dealer spread test that is part of the NASD's Primary Market Maker ("PMM") standards that are used to determine the eligibility of market makers for an exemption from the NASD's short sale rule for short sales effected during the course of bona fide market making activity. Specifically, the market maker spread component of the PMM standards provides that a market maker must maintain a spread no greater than 102 percent of the average dealer spread. The NASD recently filed a proposed rule change related to the PMM standards. See Securities Exchange Act Release No. 38091 (December 27, 1996), 62 FR 778 (January 6, 1997).

<sup>1</sup> 15 U.S.C. § 78s(b)(2).

<sup>2</sup> 17 CFR 200.30-3(a)(12).

<sup>3</sup> 15 U.S.C. § 78s(b)(1).

<sup>4</sup> 17 CFR 240.19b-4.

<sup>5</sup> The NASD requested accelerated approval of its proposed rule change.

<sup>6</sup> Securities Exchange Act Release No. 38089 (December 27, 1996), 62 FR 436 (January 3, 1997).

<sup>3</sup> 15 U.S.C. § 78f(b).

<sup>4</sup> In approving these rules, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

<sup>5</sup> See *supra* note 2.

binding on the members. The grounds for reconsideration will be limited to claims that Nasdaq's calculation of the market maker's average spread for the month was in error.

This rule change will be operational for a pilot period beginning on January 20, 1997, and ending at the close of business on July 1, 1997.

### III. Discussion

In its filing, the NASD stated that the excess spread rule was originally designed to enhance the quality of the Nasdaq market by preventing firms from holding themselves out as market makers without having a meaningful quote in the system. Despite the regulatory objectives underlying the excess spread rule, however, many market participants believe the rule has produced a variety of unintended consequences that have undermined the quality of Nasdaq quotations.<sup>7</sup> Indeed, the Commission during its investigation of the NASD found that the NASD's excess spread rule had undesirable effects.<sup>8</sup> In particular, the rule created disincentives for any given market maker to narrow its spread because to do so would reduce the maximum allowable spreads for all market makers. The Commission concluded that the rule interferes with the free flow of prices in the market and impedes attempts by the market to reach the optimal competitive spread.<sup>9</sup> The Commission also noted that the rule may create incentives for market makers to collaborate or harass each other to dissuade a market maker from changing its quote if such a change would narrow one of the three smallest spreads in the stock.<sup>10</sup> As part of its settlement with the Commission, the NASD agreed to modify the excess spread rule to eliminate its undesirable effects, or to eliminate the rule in its entirety, within one year of the Commission's Order.<sup>11</sup>

The NASD submitted its proposal to amend the current excess spread rule as an initial step to comply with the Commission's Order. The NASD also

believes that the proposed rule change is necessary in light of changes to the Nasdaq market that will be brought about by implementation of the SEC's new limit order display on January 20, 1997.<sup>12</sup> In particular, because spreads in Nasdaq securities likely will narrow due to the display of customer limit orders, the average of the three narrowest market maker spreads also will narrow. As a result, the Commission's concerns with the current excess spreads rule will be exacerbated; application of the current rule under these circumstances may increase the incentive for market maker collaboration. Application of the current excess spread rule after the effective date of the order Execution Rules could have other consequences. For example, the current rule may lead market makers to decide not to accept customer limit orders or only accept those limit orders priced at the inside bid or offer so as not to narrow the maximum allowable spread parameters.

The NASD has tried to reduce the anticompetitive effects of the excess spread rule by broadening the calculations used to determine the maximum allowable spread. The NASD recognizes that its proposal is only an interim step. Consequently, the NASD has proposed that the rule operate on a temporary basis while it studies the effects of the rule and examines other alternatives.

The Commission has determined to approve the proposed rule change on a pilot basis through July 1, 1997. The amended rule may reduce, to some degree, the Commission's concerns regarding the current excess spread rule. For example, the new spread parameters are based on the average of all market makers in an issue, rather than only the three market makers quoting the narrowest spreads. Moreover, this average will be based on a full calendar month. Further, the NASD has increased the current 125 percent test to a 150 percent test. These changes limit the effect that one market maker's quote change will have on the obligations of other market makers, and thereby will limit the incentives toward improper behavior or harassment.

Although the amended excess spread rule may reduce some of the anticompetitive concerns outlined in the 21(a) Report, the Commission believes that the amendment approved

today may not completely satisfy the NASD's obligations under the Commission's Order with regard to the excess spread rule. Specifically, it may not remove completely the anticompetitive incentives for market makers to refrain from narrowing quotes because the market makers' quotation obligation continues to be dependent to some extent upon quotations of other market makers in the stock. Nonetheless, the Commission recognizes that the NASD needs to amend its excess spread rule quickly in light of the implementation of the Commission's Order Execution Rules. Although the proposal does not present a permanent solution, it is preferable to the current rule. As a result, the Commission has approved the amendment on a pilot basis only through July 1, 1997.<sup>13</sup> During this time period, the NASD should monitor the effects of the pilot, as well as study alternative methods that would enhance market making performance while completely fulfilling the NASD's obligation regarding the excess spread rule before the August 8, 1997 deadline contained in the Commission's Order.<sup>14</sup>

Accordingly, the Commission finds that the rule change is consistent with the Exchange Act and the rules thereunder applicable to the NASD and, in particular, Sections 15A(b)(6), 15A(b)(9), and 15A(b)(11). The Commission finds good cause for approving the proposed rule change and Amendment No. 1 prior to the 30th day after the date of publication of notice of filing thereof in the Federal Register. The Commission believes that accelerated approval of the NASD's proposal is appropriate given the fact that the Order Execution Rules become effective on January 20, 1997. These rules will likely result in a more order driven environment in which market makers' quotes frequently reflect customer limit orders. This could make compliance with the current excess spread rule difficult and thus exacerbate the concerns outlined by the Commission in its 21(a) Report

<sup>7</sup> Some market participants claim that one such consequence is an increase in locked and crossed markets during periods of market turbulence because of the constraints on quote movements created by the rule.

<sup>8</sup> See Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD, the Nasdaq Market, and Nasdaq Market Makers, Securities Exchange Act Release No. 37542 (August 8, 1996) ("21(a) Report"), and Appendix thereto.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 37538 (August 8, 1996) ("Order").

<sup>12</sup> SEC Rule 11Ac1-4 requires the display of customer limit orders that are placed better than a market maker's quote or that add to the size associated with a market maker's quote when the market maker is at the best price in the market. See Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) ("Order Execution Rules Adopting Release").

<sup>13</sup> In the Securities Acts Amendments of 1975, Congress directed the Commission to use its authority under the Exchange Act, including its authority to approve self-regulatory organization ("SRO") rule changes, to foster the establishment of a national market system and promote the goals of fair competition and best execution. See S. Rep. No. 75, 94th Cong., 1st Sess. (1975) ("Senate Report"). Congress granted the Commission broad discretionary authority and maximum flexibility to carry out the objectives outlined in the 1975 Amendments. *Id.*

<sup>14</sup> The Commission notes that one possible approach is to delete entirely the excess spread methodology and instead develop alternative measures to ensure adequate market maker performance.

regarding the current excess spread rule's effect on price competition in the Nasdaq market.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the proposed rule change. 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. Copies of the submission, all subsequent amendments, all written statements with respect to Amendment No. 1 that are filed with the Commission, and all written communications relating to Amendment No. 1 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-96-50 and should be submitted by February 14, 1997.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change SR-NASD-96-50 be, and hereby is, approved effective January 20, 1997 through July 1, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Jonathan G. Katz,

Secretary.

[FR Doc. 97-1681 Filed 1-23-97; 8:45 am]

BILLING CODE 8010-01-M

#### SMALL BUSINESS ADMINISTRATION

##### [Declaration of Disaster Loan Area #2925]

##### California; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on January 4, 1997, and amendments thereto on January 7, 9, and 13, I find that Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Mateo, San Joaquin, San Benito, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and

Yuba Counties in the State of California constitute a disaster area due to damages caused by severe storms, flooding, and mud and land slides beginning on December 28, 1996 and continuing. Applications for loans for physical damages may be filed until the close of business on March 5, 1997, and for loans for economic injury until the close of business on October 6, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P. O. Box 13795, Sacramento, CA 95853-4795, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Alameda, Inyo, Kern, Kings, San Francisco, and San Luis Obispo Counties in California; Esmeralda County, Nevada; and Curry, Jackson, Josephine and Klamath Counties in Oregon. Any counties contiguous to the above-named counties and not listed herein have been covered in a previous declaration for the same occurrence.

Interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere .....	8.000
Homeowners without credit available elsewhere .....	4.000
Businesses with credit available elsewhere .....	8.000
Businesses and non-profit organizations without credit available elsewhere .....	4.000
Others (including non-profit organizations) with credit available elsewhere .....	7.250
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere .....	4.000

The number assigned to this disaster for physical damage is 292511. For economic injury the numbers are 933600 for California, 933700 for Nevada, and 933800 for Oregon.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 15, 1997.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 97-1739 Filed 1-23-97; 8:45 am]

BILLING CODE 8025-01-P

##### [Declaration of Disaster Loan Area #2924]

##### Idaho; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on January 4, 1997, and an amendment thereto on January 10, I find that Adams, Boise, Bonner, Boundary, Clearwater, Elmore, Gem, Idaho, Latah, Nez Perce, Payette, Shoshone, Valley and Washington Counties in the State of Idaho constitute a disaster area due to damages caused by severe storms, flooding, and mud and land slides beginning on December 27, 1996 and continuing. Applications for loans for physical damages may be filed until the close of business on March 5, 1997, and for loans for economic injury until the close of business on October 6, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P. O. Box 13795, Sacramento, CA 95853-4795, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Ada, Benewah, Blaine, Camas, Canyon, Custer, Gooding, Kootenai, Lemhi, Lewis, Nez Perce, Owyhee, and Twin Falls Counties in Idaho; Lincoln, Mineral, Missoula, Ravalli, and Sanders Counties in Montana; Baker, Malheur, and Wallowa Counties in Oregon; and Asotin, Pend Oreille, Spokane, and Whitman Counties in Washington.

Interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere .....	8.000
Homeowners without credit available elsewhere .....	4.000
Businesses with credit available elsewhere .....	8.000
Businesses and non-profit organizations without credit available elsewhere .....	4.000
Others (including non-profit organizations) with credit available elsewhere .....	7.250
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere .....	4.000

The number assigned to this disaster for physical damage is 292411. For economic injury the numbers are 933200 for Idaho, 933300 for Montana, 933400 for Oregon, and 933500 for Washington.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

<sup>15</sup> 17 CFR 200.30-3(a)(12).