

[Release No. 34-38240; File No. SR-NASD-96-52]

**Self-Regulatory Organizations;
National Association of Securities
Dealers, Inc.; Order Granting
Accelerated Approval of Proposed
Rule Change Relating to the Reporting
of Short Sale Transactions by Market
Makers Exempt From the NASD's
Short Sale Rule**

February 5, 1997.

I. Introduction

On December 17, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder² a proposed rule change to the Automated Confirmation Transaction ("ACT") Service rules that would require all Primary Market Makers ("PMM") to mark their ACT reports to denote when they have relied on the PMM exemption to NASD's short sale rule. The proposed rule change was published for comment in Securities Exchange Act Release No. 38092 (December 27, 1996), 62 FR 776 (January 6, 1997) ("Notice of Proposed Rule Change"). The Commission received no comments on the proposal and is approving the proposed rule change on an accelerated basis.

II. Description of the Proposal

On June 29, 1994, the Commission approved the NASD's short sale rule on an eighteen-month pilot basis through March 5, 1996.³ The Commission subsequently extended the termination date through October 1, 1997.⁴ The NASD's short sale rule prohibits member firms from effecting short sales in Nasdaq National Market ("NNM") securities at or below the current inside bid as disseminated by Nasdaq whenever the bid is lower than the previous bid.⁵ The rule provides an exemption from the short sale rule to "qualified" Nasdaq market makers who can use the exemption only in connection with bona fide market making activity. To be a qualified market maker, a market maker must

satisfy the Nasdaq PMM standards.⁶ If a market maker is a PMM for a particular stock, there is a "P" indicator next to its quote in that stock.⁷

When the Commission approved the NASD's short-sale rule it also approved an NASD proposal to require NASD members to append a designator to their ACT reports to denote whether their sale transactions were long sales, short sales, or exempt short sales. At that time, however, market makers exempt from the short-sale rule were not required to append "sell short" or "sell short exempt" to their ACT reports.⁸ Accordingly, in order to enhance the NASD's ability to surveil for potential abuses of the market maker exemption and examine and monitor the market impacts of the market maker exemption, the NASD's proposed rule change deletes the footnote to NASD Rule 6130(d)(6), thereby requiring all exempt market makers to mark their ACT reports to denote when they have relied on the market maker exemption.

The NASD will establish an effective date for the rule change in a Notice-to-Members announcing Commission approval of the proposal. The Notice will be published within thirty days of Commission approval of the proposal and the effective date of the proposal

⁶ Pursuant to NASD Rule 4612, the PMM standards require a market maker to satisfy at least two of the following four criteria to be eligible for an exemption from the short sale rule: (1) the market maker must be at the best bid or best offer as shown on Nasdaq no less than 35 percent of the time; (2) the market maker must maintain a spread no greater than 102 percent of the average dealer spread; (3) no more than 50 percent of the market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading; or (4) the market maker executes 1½ times its "proportionate" volume in the stock. Specifically, the proportionate volume test requires a market maker to account for volume of at least 1½ times its proportionate share of overall volume in the security for the review period. For example, if a security has 10 market makers, each market maker's proportionate share volume is 10 percent. Therefore, the proportionate share volume is one-and-a-half times 10, or 15 percent of overall volume. But, see Securities Exchange Act Release No. 38175 (January 15, 1997) (Commission approving NASD rule proposal to waive the PMM qualification standards in conjunction with the adoption of the Commission's Order Execution Rules); and File No. SR-NASD-97-07 (January 31, 1997) (Proposed rule change to temporarily suspend the use of the Primary Market Maker qualification criteria for all Nasdaq market maker securities for the remainder of the current pilot period of the Nasdaq short sale rule).

⁷ See Securities Exchange Act Release no. 38175 (January 15, 1997), stating that the NASD will, upon suspension of the PMM qualification criteria for NNM securities, deem all registered market makers in such securities PMMs.

⁸ Specifically, the footnote to NASD Rule 6130(d)(6) provides that "[t]he 'sell short' and 'sell short exempt' indicators must be entered for all customer short sales, including cross transactions, and for short sales effected by members that are not qualified market makers pursuant to Rule 3350."

will be no longer than three weeks after the date of publication of the Notice.

III. Discussion

The Commission believes the NASD's proposed rule change is consistent with Section 15A(b)(6) of the Act,⁹ and that it will promote efficiency, competition, and capital formation. Section 15A(b)(6) requires that the rules of a national securities association be designed to promote just and equitable principles of trade, to foster cooperation and coordination with person engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. The Commission believes that requiring exempt market makers to mark their ACT reports to denote when they have relied upon the PMM exemption will help to enhance the ability of NASD Regulation, Inc. to efficiently monitor whether market makers are abusing the exemption.¹⁰ Furthermore, the Commission, in approving the short sale rule on a pilot basis, requested the NASD to study various aspects of the rule's effects, including the use of the PMM exemption to the rule. The Commission, therefore, believes that requiring PMMs to append a designator to their ACT reports will assist the NASD in assessing the market impacts of the PMM exemption from the short sale rule, as well as facilitate the preparation of a thorough analysis of such exemption.

The NASD requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in the Federal Register. The Commission finds good cause for so approving the proposed rule change because accelerated approval will allow the NASD to begin collecting the necessary data for a meaningful statistical analysis of the market impact of the PMM exemption from the short sale rule. Furthermore, the Commission believes it is prudent to allow the NASD to begin requiring PMMs to mark their ACT reports when they have relied on the PMM exemption as soon as possible in order that the NASD and PMMs will become familiar with the use of the ACT

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ See footnote 6, supra; and Letter from Howard Kramer, Associate Director, Division of Market Regulation, Commission, to Eugene A. Lopez, Assistant General Counsel, NASD (February 3, 1997) (No-action letter regarding suspension of the Primary Market Maker standards).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994) ("Short Sale Rule Approval Order").

⁴ See Securities Exchange Act Release Nos. 36171 (August 30, 1995), 60 FR 46651; 36532 (November 30, 1995), 60 FR 62519; 37492 (July 29, 1996), 61 FR 40693; and 37919 (November 1, 1996), 61 FR 57934.

⁵ See NASD Rule 3350.

denotation, thereby aiding in efficient data collection.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the NASD, and in particular Section 15A(b)(6).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (File No. SR-NASD-96-52) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted within 60 days of this publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S. W., Suite 5000, Washington, D. C. 20416. Phone Number: 202-205-6629.

SUPPLEMENTARY INFORMATION:

Title: "Surety Bond Guaranty Agreement, Preferred Lenders Program".

Type of Request: Extension of Currently Approved Collections.

Form No.'s.: SBA Forms 990, 991, 994, 994B, 994C, 994F, 994H.

Description of Respondents: Small Business Contractors Applying for the Surety Bond Guarantee Program.

Annual Responses: 55,000.

Annual Burden: 28,837.

Comments: Send all comments regarding this information collection to William Berry, Deputy Associate Administrator, Office of Surety Guarantees, Small Business Administration, 409 3rd Street, S. W., Suite 8600 Washington, D.C. 20416. Phone No.: 202-205-6549.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: "Questionnaires for section 503 Development Company and Company doing Business with a Section 503 Development Company".

Type of Request: Extension of Currently Approved Collections.

Form No.'s.: SBA Forms 1301, 1302.

Description of Respondents: State and Local Development Companies.

Annual Responses: 90.

Annual Burden: 180.

Title: "Statement of Personal History".

Type of Request: "Extension of Currently Approved Collections".

Form No. SBA Form 912.

Description of Respondents: Applicants for Assistance or Temporary Employment in Disaster Office.

Annual Responses: 30,000.

Annual Burden: 2,500.

Comments: Send all comments regarding these information collections to Pat Anderson, Administrative Officer, Office of the Inspector General, Small Business Administration, 409 3rd Street, S.W., Suite 7150 Washington, D.C. 20416. Phone No. 202-205-6580.

Send comments regarding whether these information collections are necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: "SBIR Mailing List and Confirmation Request and STTR Mailing List and Confirmation".

Type of Request: Extension of Currently Approved Collections.

Description of Respondents: Small Businesses Interested Participating in the SBIR/STTR Solicitation Process.

Form No.'s.: SBA Forms 1386, 1906.

Annual Responses: 60,000.

Annual Burden: 500.

Comments: Send all comments to Shirley F. Smith, Program Analyst, Office of Technology, Small Business Administration, 409 3rd Street, S.W., Suite 8150 Washington, D.C. 20416. Phone No. 202-205-7295.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: "Guidelines for Small Business Award Nominations".

Type of Request: Extension of Currently Approved Collections.

Description of Respondents: Organizations Nominating a Small Business Leader for Small Business Advocacy Awards.

Form No. N/A.

Annual Responses: 500.

Annual Burden: 1,083.

Comments: Send all comments regarding this information collection to Janie Dymond, Administrative Assistant, Office Public Communications, Marketing and Customer Service, Small Business Administration, 409 3rd Street, S.W., Suite 7600 Washington, D.C. 20416. Phone No. 202-205-6740.

Title: "Loan Closing Documents".

Type of Request: Extension of Currently Approved Collections.

Description of Respondents: SBA Loan Applicants.

Form No.'s.: SBA Forms 147, 148, 159, 160, 160A, 529B, 928, 1059.

Annual Responses: 25,451.

Annual Burden: 152,706.

Comments: Send all comments regarding this information collection to Michael J. Dowd, Director, Office of Loan Programs, Small Business Administration, 409 3rd Street, S.W. Suite 8300, Washington, D.C. 20416. Phone No. 202-205-6570.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Vanessa K. Smith,

Acting Chief, Administrative Information Branch.

[FR Doc. 97-3279 Filed 2-10-97; 8:45 am]

BILLING CODE 8025-01-P

[Declaration of Disaster Loan Area #2925]

California; Declaration of Disaster Loan Area, (Amendment #1)

In accordance with a notice from the Federal Emergency Management Agency, dated January 24, 1997, the above-numbered Declaration is hereby amended to include Alameda and San Francisco Counties in the State of California, as well as the City of Morgan Hill which was previously omitted as a disaster area due to damages caused by severe storms, flooding, and mud and land slides beginning on December 28, 1996 and continuing.

All counties contiguous to the above-named counties have been previously declared.

All other information remains the same, i.e., the termination date for filing

¹¹ 15 U.S.C. 78s(b)(2) (1988).

¹² 17 CFR 200.30-3(a)(12) (1995).