SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39218; File No. SR–NASD–97–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Its Rules Governing Excused Market Maker Withdrawals and Market Maker Reinstatements

October 8, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] notice is hereby given that on January 24, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. On September 30, 1997, the NASD submitted an amendment (''Amendment No. 1'') to the proposed rule change to make technical amendments to the text of the proposed rule change.[2] 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 NASD proposes to amend its rules governing excused market maker withdrawals and the voluntary termination of market maker registrations. The proposed rule changes also would amend the NASD's rules governing the reinstatement of market makers that have been ''SOESed out of the Box'' or have accidentally withdrawn from a security. The text of the proposed rule changes are as follows. (Additions are italicized; deletions are bracketed.)

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4619. Withdrawal of Quotations and Passive Market Making

(a) A market maker that wishes to withdraw quotations in a security or have its quotations identified as the quotations of a passive market maker shall contact Nasdaq *Market* Operations to obtain excused withdrawal status prior to withdrawing its quotations *or identification as a passive market maker*. Withdrawals of quotations or identifications of quotations as those of a passive market maker shall be granted by Nasdaq Market Operations only upon satisfying one of the conditions specified in this Rule.

(b) Excused withdrawal status based on [physical] circumstances beyond the market maker's control may be granted for up to five (5) business days, unless extended by Nasdaq *Market* Operations. Excused withdrawal status [or passive market maker status] based on demonstrated legal or regulatory requirements, supported by appropriate documentation and accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon written request, be granted for not more than sixty (60) days (unless such request is required to be made pursuant to paragraph (d) below). Excused withdrawal status based on religious holidays may be granted only if *written* notice is received by the Association [five] *one* business day[s] in advance and is approved by the Association. Excused withdrawal status based on vacation may be granted only if:

(1) the *written* request for withdrawal is received by the Association [twenty (20)] *one* business day[s] in advance, and is approved by the Association;

(2) the request includes a list of the securities for which withdrawal is requested; and

(3) the request is made by a market maker with three (3) or fewer Nasdaq level 3 terminals. Excused withdrawal status may be granted to a market maker that has withdrawn from an issue prior to the public announcement of a merger or acquisition and wishes to re-register in the issue pursuant to the same-day registration procedures contained in Rule 4611, above, provided the market maker has remained registered in one of the affected issues. The withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not constitute acceptable reasons for granting excused withdrawal status.

(c)–(d) No changes.

(*e*) *The Market Operations Review Committee shall have jurisdiction over proceedings brought by Market Makers seeking review of the denial of an excused withdrawal pursuant to this Rule 4619, or the conditions imposed on their reentry.*

4620. Voluntary Termination of Registration

(*a*) A market maker may voluntarily terminate its registration in a security by withdrawing its quotations from The Nasdaq Stock Market. A market maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for twenty (20) business days. Withdrawal from SOES participation as a market maker in a Nasdaq National Market security shall constitute termination of registration as a market maker in that security for purposes of this Rule; provided, however, that a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the Automated Confirmation Transaction System and thereby terminates its registration as a market maker in Nasdaq National Market issues may register as a market maker at any time after a clearing arrangement has been reestablished and the market maker has complied with ACT participant requirements contained in Rule 6100.

(b) Notwithstanding the above, a market maker that accidentally withdraws as a market maker may be reinstated if;

(1) the market maker notified Market Operations of the accidental withdrawal as soon as practicable under the circumstances, but within at least one hour of such withdrawal, and immediately thereafter provided written notification of the withdrawal and reinstatement request;

(2) it is clear that the withdrawal was inadvertent and the market maker was not attempting to avoid its market making obligations; and

(3) the market maker's firm would not exceed the following reinstatement limitations:

(A) for firms that simultaneously made markets in less than 250 stocks during the previous calendar year, the firm can receive no more than two (2) reinstatements per year;

(B) for firms that simultaneously made markets in more than 250 but less than 500 stocks during the previous calendar year, the firm can receive no more than three (3) reinstatements per year; and

(C) for firms that simultaneously made markets in more than 500 stocks during the previous calendar year, the firm can receive no more than six (6) reinstatements per year.

(c) Factors that the Association will consider in granting a reinstatement under paragraph (b) of this rule include, but are not be limited to:

(1) the number of accidental withdrawals by the market maker in the past, as compared with market makers

[1] 15 U.S.C. § 78s(b)(1).

[2] *See* Letter from Robert E. Aber, Vice President and General Counsel, NASDAQ, to Katherine England, Assistant Director, Division of Market Regulation, Securities and Exchange Commission (September 29, 1997).

making markets in a comparable number of stocks;

(2) the similarity between the symbol of the stock that the market maker intended to withdraw from and the symbol of the stock that the market maker actually withdrew from;

(3) (market conditions at the time of the withdrawal;

(4) whether, given the market conditions at the time of the withdrawal, the withdrawal served to reduce the exposure of the member's position in the security at the time of the withdrawal to market risk; and

(5) the timeliness with which the market maker notified Market Operations of the error.

(d) The Market Operations Review Committee shall have jurisdiction over proceedings brought by Market Makers seeking review of their denial of a reinstatement pursuant to paragraph (b) above.

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4730. Participant Obligations in SOES

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(b)(6) In the case of an NNM security, a Market Maker will be suspended from SOES if its bid or offer has been decremented to zero due to SOES executions and will be permitted a standard grace period, the duration of which will be established and published by the Association, within which to take action to restore a two-sided quotation in the security for at least one normal unit of trading. A Market Maker that fails to re-enter a two-sided quotation in a NNM security within the allotted time will be deemed to have withdrawn as a Market Maker (*''SOESed out of the Box''*). except as provided *below in this subparagraph and* in subparagraph (7) [below], a Market Maker that withdraws in an NNM security may not reenter SOES as a Market Maker in that security for twenty (20) business days.

(A) Notwithstanding the above, a market maker can be reinstated if:

(i) the market maker makes a request for reinstatement to Market Operations as soon as practicable under the circumstances, but within at least one hour of having been SOESed out of the Box, and immediately thereafter provides written notification of the reinstatement request;

(ii) it was a Primary Market Maker at the time it was SOESed out of the Box;

(iii) the market maker's firm would not exceed the following reinstatement limitations;

a. for firms that simultaneously made markets in less than 250 stocks during the previous calendar year, the firm can receive no more than four (4) reinstatements per year;

b. for firms that simultaneously made markets in more than 250 but less than 500 stocks during the previous calendar year, the firm can receive no more than six (6) reinstatements per year;

c. for firms that simultaneously made markets in more than 500 stocks during the previous calendar year, the firm can receive no more than twelve (12) reinstatements per year; and

(iv) the designated Nasdaq officer makes a determination that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market. In making this determination, the designated Nasdaq officer will consider, among other things:

a. whether the market conditions in the issue included unusual volatility or other unusual activity, and/or the market conditions in other issues in which the market maker made a market at the time of the SOES exposure limit exhaustion;

b. the frequency with which the firm has been SOESed out of the Box in the past;

c. Procedures the firm has adopted to avoid being inadvertently SOESed out of the Box; and

d. the length of time before the market maker sought reinstatement.

(B) If a market maker has exhausted the reinstatement limitations in subparagraph (b)(6)(A)(iii) above, the designated Nasdaq officer may grant a reinstatement request if he or she finds that such reinstatement is necessary for the protection of investors or the maintenance of fair and orderly markets and determines that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market in instances where:

(i) a member firm experiences a documented problem or failure impacting the operation or utilization of any automated system operated by or on behalf of the firm (chronic system failures within the control of the member will not constitute a problem or failure impacting a firm's automated system) or involving an automated system operated by Nasdaq;

(ii) the market maker is a manager or co-manager of a secondary offering from the time the secondary offering is announced until ten days after the offering is complete; or

(iii) absent the reinstatement, the number of market makers in a particular issue is equal to two (2) or less or has otherwise declined by 50% or more from the number that existed at the end of the prior calendar quarter, except that if a market maker has a regular pattern of being frequently SOESed out of the Box, it may not be reinstated notwithstanding the number of market makers in the issue.

* * * * *

(b)(8) [The Rule 9700 Series of the Code of Procedure] *The Market Operations Review Committee* shall [apply to] *have jurisdiction over* proceedings brought by Market Makers seeking review of [(A)] their removal from SOES pursuant to subparagraphs (6) *or (7)* above [, (B) the denial of an excused withdrawal pursuant to Rule 4619, or (C) the conditions imposed on their reentry].

* * * * *

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 NASD 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 NASD 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

In order to ensure that markt makers are complying with their obligation to make continuous, firm two-sided markets, NASD Rule 4620 provides that market makers who voluntarily withdraw from an issue cannot re-register in that issue for 20 business days. This rule is commonly referred to as the ''20-day Rule.'' A corollary rule to the ''20-day Rule'' is NASD Rule 4730(b)(6), a Small Order Execution System (''SOES'') rule that provides that a market maker in a Nasdaq National Market (''NNM'') security will be deemed to have voluntarily withdrawn from a stock, and therefore be subject to the 20-Day Rule, if it has failed to restore a two-sided quotation within five minutes after its bid or offer has been completely decremented due to a SOES execution. When a market maker is deregistered from a stock because it failed to restore its quotation, it is referred to as being ''SOESed out of the Box.'' To avoid being ''SOESed out of the Box,'' members can do one of two things: (a) Elect to not have their quote size decremented upon the execution of SOES orders, provided the market maker's quote size is equal to or greater than the applicable SOES tier size; or (b)

utilize Nasdaq's autorefresh feature that automatically updates a market maker's quote after its quote size has been decremented.

Notwithstanding the 20-day Rule, NASD Rule 4619 affords market makers the ability to obtain an ''excused'' market maker withdrawal in certain limited circumstances. Market makers receiving ''excused'' withdrawals are not subject to the 20-Day Rule and can re-enter their quotes once the circumstances justifying the withdrawal no longer exist. For example the rule currently allows excused withdrawals for: (1) The duration of ''cooling off'' periods mandated by certain rules under Regulation M of the Exchange Act (formerly Exchange Act Rule 10b–6); (2) physical circumstances beyond the market maker's control; (3) religious holidays (provided the request is submitted 5 business days in advance of the holiday); (4) vacations (provided the request is received 20 business days in advance of the vacation and is made by a market maker with 3 or less Nasdaq terminals); (5) involuntary failures to maintain clearing arrangements; and (6) other legal requirements, (*e.g.*, the market maker is in possession of material non-public information).

The handling of excused withdrawal requests and the reinstatement of market makers who have been ''SOESed out of the Box'' was criticized in the SEC's 21(a) Report on the NASD and The Nasdaq Stock Market.[3] In sum, the SEC found that the NASD had improperly granted waivers of the 20-Day Rule for market makers that were ''SOESed out of the Box'' and that the NASD had not followed its own rules when granting excused withdrawals (*e.g.*, excused withdrawals for vacations were granted with less than 20-days advance notice). As a result, the SEC stated in its 21(a) Report that:

[t]he NASD's failure to enforce its excused withdrawal rules has fostered an environment that allowed market makers to avoid their responsibilities to maintain continuous quotes in the securities in which they made markets. Market makers were able to withdraw voluntarily from SOES beyond the permitted five-minute window, or otherwise withdraw from the market during periods of volatility without substantial risk that the NASD will enforce a twenty-day suspension.[4]

Accordingly, in order to ensure that market makers are not able to avoid or circumvent their market making obligations through inappropriate excused market maker withdrawals or inappropriate market maker reinstatements, the NASD and Nasdaq are submitting this rule proposal. As detailed below, the proposed changes are in three general areas: (1) Market maker reinstatements upon being ''SOESed out of the Box'' or after accidental market maker withdrawals; (2) bases for excused withdrawals; and (3) the jurisdiction of the Market Operations Review Committee (''MORC'') over excused market maker withdrawals and market maker reinstatements. In sum, by establishing more objective standards for the reinstatement of market makers who have been ''SOESed out of the Box'' or accidentally withdraw from a stock and modifying the rules to better reflect the operational realities of the marketplace, the NASD and Nasdaq believe the proposed modifications are responsive to the deficiencies noted in the SEC's 21(a) Report. Following are the specific rule changes proposed by the NASD and Nasdaq.

1. *Reinstatement of Market Makers Upon Being ''SOESed Out of the Box'' and for Accidental Withdrawals*

a. Reinstatements Upon Being ''SOESed Out of the Box''

The proposed rule change is designed to ensure that market maker reinstatements will only be made when it is clear that a market maker was not attempting to avoid its market making obligations. Specifically, the proposed changes to Rule 4730 provides that a market maker can be reinstated only if: (1) The market maker notifies Market Operations to request reinstatement within one hour of being ''SOESed out of the Box,'' and immediately thereafter provides written notification of the request; (2) a designated Nasdaq officer determines that the withdrawal was not an attempt by the market maker to avoid its obligations to make a continuous two-sided market, taking into account factors including market conditions at the time, the frequency with which the firm has been SOESed out of the Box, procedures adopted by the firm to avoid doing so inadvertently, and the length of time before the firm sought reinstatement; (3) it was a Primary Market Maker at the time it was SOESed out of the Box; and (4) the reinstatement would not result in the market maker's firm exceeding certain limitations on the number of reinstatements per year. In particular, under the proposal, firms that simultaneously made markets in less than 250 stocks during the previous calendar year could receive no more than four reinstatement per year; firms that simultaneously made markets in more than 250 but less than 500 stocks during the previous calendar year could receive one more than six reinstatements per year; and firms that simultaneously made markets in more than 500 stocks during the previous calendar year could receive no more than twelve reinstatements per year. Decisions to reinstate a market maker would be made by Nasdaq Market Operations staff and appeals of such decisions would be considered by the MORC.

Finally, notwithstanding the numerical limitations and requirements set forth above, in instances where a member firm experiences a documented technological constrain or failure involving either is own automated system or an automated system operated by Nasdaq, the market maker is a manager or co-manager of a secondary offering that is about to occur or has just occurred, or there has been a significant decline in the number of market makers in a particular issue, the NASFD and Nasdaq propose that Nasdaq should have the authority to reinstate a market maker that has been ''SOESed out of the Box'' if such reinstatement is necessary to protect investors or the integrity of the market. Specifically, before any such reinstatement could occur, Nasdaq staff would have to make a finding that the reinstatement is necessary for the protection of investors or the maintenance of fair and orderly markets and determine that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market.

b. Reinstatements for Accidental Withdrawals

There have been instances in the past where market makers have accidentally withdrawn from a stock because they inadvertently typed the wrong stock symbol. Because the rules currently do not provide that market makers can be reinstated in these instances, Nasdaq and the NASD propose that Rule 4620 be amended to permit such reinstatements provided the withdrawal was clearly accidental and did not reflect an attempt by the market maker to avoid its market making obligations. Specifically, under the proposal, a market maker that accidently withdraws as a market maker may be reinstated if: (1) The market maker notifies Market Operations of the accidental withdrawal within one hour of such withdrawal, and immediately thereafter provides written notification of the withdrawal and request; (2) it is clear that the withdrawal was inadvertent and the market maker was not attempting to

[3] *See* Appendix to Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and The Nasdaq Stock Market (''21(a) Report''), SEC, August 8, 1996, at p. 91–95.

[4] *Id.* at p. 94.

avoid its market making obligations; and (3) the market maker's firm would not exceed specific reinstatement limitations per year. In particular, firms that simultaneously make markets in less than 250 stocks during the previous calendar year could receive no more than two reinstatements per year. Firms that simultaneously made markets in more than 250 but less than 500 stocks could receive no more than three reinstatements per year. Firms that simultaneously make markets in more than 500 stocks could receive no more than six reinstatements per year.

In addition, factors that would be considered in granting a reinstatement include: (1) The number of accidental withdrawals by the market maker in the past as compared to other market makers making markets in a comparable number of stocks; (2) the similarity between the symbol of the stock intended to be withdrawn and the symbol of the stock actually withdrawn; (3) market conditions; (4) whether the withdrawal served to reduce the market maker's exposure to market risk; and (5) the timeliness with which the market maker notified Nasdaq Market Operations of the error. Determinations initially would be made by Nasdaq Market Operations staff and be subject to review by the MORC.

2. Bases for Excused Withdrawals

Rule 4619(b) presently provides that excused withdrawal status may be granted for a variety of reasons provided that certain conditions are satisfied. Specifically, as noted above, excused withdrawal status may be granted for: (1) The duration of ''cooling off'' periods mandated by Regulation M; (2) physical circumstances beyond the market maker's control; (3) religious holidays (provided the request is submitted 5 business days in advance of the holiday); (4) vacations (provided the request is received 20 business days in advance of the vacation and is made by a market maker with 3 or less Nasdaq terminals); (5) involuntary failures to maintain clearing arrangements; and (6) other legal requirements (*e.g.*, the market maker is in possession of material non-public information). While the NASD and Nasdaq continue to believe that it is critical for the maintenance of the integrity of the market for Nasdaq to grant excused withdrawals only when warranted, particularly in light of the SEC's 21(a) Report, the NASD and Nasdaq nevertheless believe that the present excused withdrawal rule is not drafted broadly enough to encompass all of the legitimate reasons for an excused withdrawal. The NASD and Nasdaq also believe that the time parameters for advance notice of vacations and religious holidays are unnecessary.

Accordingly, the NASD and Nasdaq propose the following amendments to Rule 4619(b). First, excused withdrawals may be granted for ''circumstances'' beyond the market maker's control, not just ''physical circumstances'' beyond its control. With this amendment, unpredictable events, such as jury duty, bomb threats, the birth of a child, or a sudden illness, could be used as a basis for an excused withdrawal. Second, requests for excused withdrawals based on vacations and religious holidays may be submitted one business day in advance of the proposed withdrawal. Requests for excused withdrawals based on legal or regulatory requirements will continue to be made in writing, although Nasdaq recognizes that counsel to market makers often do not want to disclose the specific legal basis for their withdrawal request, particularly when the basis for the withdrawal is that the market maker is in possession of material, non-public information. In this connection, Nasdaq would continue its current practice of apprising NASD Regulation, Inc. of all such requests.

3. Jurisdiction of the MORC Over Excused Market Maker Withdrawals and Market Maker Reinstatements

Presently, appeals of Nasdaq staff determinations concerning excused withdrawal requests and market Maker reinstatements are within the purview of the NASD's Qualifications Committee's jurisdiction pursuant to NASD Rule 4730(b)(8). Pursuant to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries, however, The Board of Directors of Nasdaq has delegated the MORC jurisdiction over such matters. Accordingly, the NASD proposes to amend Rules 4619, 4620, and 4730, to effectuate the transfer of jurisdiction over these matters from the Qualifications Committee to the MORC.

The NASD believes that the proposed rule changes are consistent with Sections 15A(b)(6), 15A(b)(9), 15A(b)(11) and 11A(a)(1)(C) of the Act. Among other things, Section 15A(b)(6) requires that the rules of a national securities association be 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 regulating, clearing, settling, processing information with respect to, and 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. Section 15A(b)(9) provides that the rules of the Association may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Section 15A(b)(11) empowers the NASD to adopt rules governing the form and content relating to securities in the Nasdaq market. Such rules must be designed to produce fair and informative quotations, prevent fictitious and misleading quotations, and promote orderly procedures for collecting and distributing quotations. Section 11A(a)(1)(C) provides that it is in the public interest to, among other things, assure the economically efficient execution of securities transactions and the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

In particular, by ensuring that market makers will only be relieved of their market making obligations for legitimate reasons and that waivers of the ''20-day rule'' will only be made when it is absolutely clear that the market maker receiving the waiver was not attempting to avoid its market making obligations when it withdrew or was withdrawn from the security, the NASD and Nasdaq believe the proposed rule change will help to ensure that market makers are abiding by their obligations to make continuous, two-sided markets and promote quote competition among market makers. Such competition among market makers will, in turn, enhance the integrity of the Nasdaq market, the best execution of customer orders, and the price discovery process for Nasdaq securities.

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

The NASD believes that the proposed rule change will not 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

Comments were neither solicited nor received.

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 NASD 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. 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 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 Number SR–NASD–97–04, and should be submitted by November 5, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27281 Filed 10–14–97; 8:45 am]

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[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39206; File No. SR–NYSE–97–27]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Extension of the Pilot for Allocation Policy and Procedures

October 6, 1997.

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 September 19, 1997, 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

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

[2] 17 CFR 240.19b–4.

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

The proposed rule change extends the effectiveness of the pilot program relating to the Exchange's Allocation Policy and Procedures until November 28, 1997. The text of the proposed rule change is available at the Office of the Secretary, the NYSE, and at 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, the self-regulatory organization 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 III below. The self-regulatory organization 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

The purpose of the proposed rule change is to extend the effectiveness of a pilot program relating to the Exchange's Allocation Policy and Procedures. The Exchange's Allocation Policy and Procedures are intended: (1) To ensure that securities are allocated in an equitable and fair manner and that all specialist units have a fair opportunity for allocations based on established criteria and procedures; (2) to provide an incentive for ongoing enhancement of performance by specialist units; (3) to provide the best possible match between specialist unit and security and (4) to contribute to the strength of the specialist system.

The Exchange recently implemented, on a pilot basis, a revised Allocation Policy and Procedures to amend the procedures by which the Exchange selects a specialist for newly listed companies.[3] The Exchange's pilot program, which expires October 7, 1997, provides listing companies with two options, either: (1) To have their specialist unit selected by the Allocation Committee according to existing allocation criteria, with company input permitted in the form of a ''generic letter'' which may describe desired general characteristics of a specialist unit, but may not mention particular units or describe characteristics that would be applicable to a readily identifiable specialist unit; or (2) to make the final selection of a specialist unit from among three to five units selected by the Allocation Committee, with a generic letter from the company describing desired specialist unit characteristics permitted, as in (1) above. In the case of both options, if a generic letter is submitted, the letter would be distributed to all specialist units along with allocation data sheets (''green sheets'').

The Exchanges proposes to extend the Allocation Policy and Procedure pilot program until November 28, 1997 to continue to study its effects.

2. Statutory Basis

The NYSE believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act[4] that an Exchange have rules that are designed to promote just and equitable principles of trade, 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 Exchange believes that extending the effectiveness of the Allocation Policy and Procedures until November 28, 1997 is consistent with these objectives in that they enable the Exchange to further enhance the process by which stocks are allocated between specialist units to ensure fairness and equal opportunity in the process.

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.

[3] *See* Securities Exchange Act Release No. 38372 (March 7, 1997), 62 FR 13421 (March 21, 1997) (notice of filing and immediate effectiveness of File No. SR–NYSE–97–04).

[4] 15 U.S.C. 78f(b)(5).