requirements regarding minimum public float, and a ''market capitalization'' test that Nasdaq is in the process of proposing. Corporate name charge information also must be kept up to date.

2. Statutory Basis

The NASD and Nasdaq believe the proposed rule change is consistent with Sections 15A(b)(6)[4] and 11A(a)(1)(C)[5] of the Act. 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, and to remove impediments to and perfect the mechanism of a free and open market. Section 11A(a)(1)(C) provides that it is in the public interest and appropriate for the protection of investors to, among other things, assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. The restoration of the notification requirement is necessary to ensure that the NASD and Nasdaq have current information on the total shares outstanding for Nasdaq issuers. This information is important to accurately calculate market capitalization and adjust indices containing Nasdaq securities. These indices are relied upon by market participants and the public to indicate the value and movement, in the aggregate, of the securities of which they are comprised. In addition, the information is relevant to Nasdaq listing standards. Records regarding corporate name changes also must be kept current.

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

The NASD and Nasdaq do 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, as amended.

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

Written comments were neither solicited nor received.

III. 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 No. SR–NASD–97–03 and should be submitted by February 28, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the NASD's and Nasdaq's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association. Specifically, the Commission finds that the proposed rule change is consistent with Sections 15A(b)(6)[6] and 11A(a)(1)(C)[7] of the Act, which require that a national securities association have rules that are 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, in general, to protect investors and the public interest.

The Commission believes that this proposal is consistent with Section 15A(b)(6) and 11A(a)(1)(C) of the Act because it will reinstate filing requirements imposed on Nasdaq-listed companies prior to the elimination of Form 10–C by the Commission. The reinstatement of the notification requirement will ensure that the NASD and Nasdaq continue to receive pertinent information relating to Nasdaq-listed companies on a timely basis. The Commission believes that the continued receipt of timely information relating to changes in the amount of shares outstanding of more than 5% or changes in corporate name of Nasdaq-listed companies may prevent fraudulent or manipulative acts and practices and will serve the public interest as such information is relied upon by market participants. The Commission therefore finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register.

It is therefore ordered, pursuant to Section 19(b)(2)[8] of the Act, that the proposed rule change (File No. SR–NASD–97–03) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–3067 Filed 2–6–97; 8:45 am]

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[Release No. 34–38221; File No. SR–NYSE–96–38, SR–Amex–96–49, SR–CBOE–96–78, SR–CHX–96–33, SR–BSE–96–12, and SR–Phlx–97–03]

Self-Regulatory Organizations; Order Granting Approval To Proposed Rule Changes by the New York Stock Exchange, Inc., American Stock Exchange, Inc., and Chicago Board Options Exchange, Incorporated; and Order Granting Accelerated Approval To Proposed Rule Change by the Chicago Stock Exchange, Incorporated, and Boston Stock Exchange, Inc., and Notice of Filing and Order Granting Accelerated Approval To Proposed Rule Change by the Philadelphia Stock Exchange Inc., and Amendment No. 1 to the Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Relating to Amendments to Their Respective Market-Wide Circuit Breaker Provisions

January 31, 1997.

I. Introduction

On December 11, 1996, the New York Stock Exchange, Inc. (''NYSE''); on December 16, 1996, the American Stock Exchange, Inc., (''Amex''), on December 18, 1996, the Chicago Board Options Exchange, Incorporated (''CBOE''), and the Chicago Stock Exchange, Incorporated (''CHX''); on December 31, 1996, the Boston Stock Exchange, Inc. (''BSE''); and on January 6, 1997, the Philadelphia Stock Exchange, Inc. (''Phlx'') respectively (each individually referred to herein as an ''Exchange'' and

[4] 15 U.S.C. 78o–3(b)(6).

[5] 15 U.S.C. 78k–1(a)(1)(C).

[6] 15 U.S.C. 78o–3(b)(6).

[7] 15 U.S.C. 78k–1(a)(1)(C).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

two or more collectively referred to as ''Exchanges''), submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] proposed rule changes relating to certain market-wide circuit breaker provisions.

The proposed rule changes were published for comment in Securities Exchange Act Release Nos. 38047 (December 13, 1996), 61 FR 67087 (December 19, 1996) (NYSE); 38071 (December 20, 1996), 61 FR 68805 (December 30, 1996) (Amex); 38080 (December 23, 1996), 61 FR 69126 (December 31, 1996) (CBOE); 38130 (January 6, 1997), 62 FR 1938 (January 14, 1997) (CHX); and 38138 (January 8, 1997), 62 FR 2202 (January 15, 1997) (BSE). The BSE submitted to the Commission Amendment No. 1 on January 7, 1997,[3] and Amendment No. 2 on January 15, 1997.[4] The CBOE submitted to Commission Amendment No. 1 on January 17, 1997.[5] The Commission received one comment letter on the proposals.[6]

This order approves the proposed rule changes. The proposals by CHX, BSE, Phlx, and CBOE's Amendment No. 1 are being approved on an accelerated basis.

II. Description of the Proposal

The Exchanges propose to amend their rules relating to ''Trading Halts Due to Extraordinary Market Volatility—circuit breakers'' to increase the trigger levels for circuit breakers that impose temporary market-wide trading halts. The current circuit breakers are triggered if the Dow Jones Industrial Average (''DJIA'') declines by 250 and 400 points, respectively, from its previous day's close. A decline by 250 or more points would result in a one-half hour trading halt, while a decline of 400 or more points would cause trading to halt for an additional hour. Now, the Exchanges propose establishing new thresholds of 350 and 550 points in the DJIA before the respective one-half hour and one hour circuit breakers are triggered.[7] The Exchanges seek to effect these changes on a one-year pilot basis. The futures exchanges trading stock index futures have proposed analogous circuit breaker proposals with the Commodity Futures Trading Commission (''CFTC'') to halt trading in such contracts.[8]

III. Summary of Comments

The Commission received one comment letter—the Markey Letter—on the Exchanges' proposals.[9] The Markey Letter, while acknowledging ''the need for the Commission and its staff to continually reexamine the circuit breakers to determine their efficacy in light of changing market conditions,'' also expressed concern that ''the sheer size of the market movement which would occur before (the proposed) trading halt(s) (were) activated could be extremely disturbing to investors and could possibly disrupt the fair and orderly functioning of the markets.'' [10]

The Markey Letter continued by stating ''that any changes to the circuit breakers could contribute to a much higher level of market volatility that might impair investor confidence or result in other unforeseen consequences.'' Finally, the Markey Letter recommended that, if the proposals are adopted, the Commission should consider establishing ''speed bumps'' at the intervening levels in order to reduce volatility before the actual trading halts are triggered.[11]

IV. Discussion

After careful review of the Exchanges' proposed amendments to their circuit breaker rules and the comment thereto, and for the reasons discussed below, the Commission believes that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and, in particular, with the requirements of Section 6(b).[12] Specifically, the Commission believes the proposals are 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 remove impediments to and perfect the mechanism of a free and open market and a national market system, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.[13]

In 1988, the Commission approved circuit breaker rule proposals by the

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

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Karen A. Aluise, Assistant Vice President, BSE, to Holly Smith, Associate Director, Office of Market Supervision (''OMS''), Division of Market Regulation (''Market Regulation''), Commission, dated January 7, 1997 (''BSE Amendment No. 1''), correcting a typographical error regarding the adjustment of its second circuit breaker trigger level. *See* Securities Exchange Act Release No. 38138 (January 8, 1997), 62 FR 2202.

[4] *See* Letter from Thomas J. Frain, Staff Attorney, BSE, to Chester A. McPherson, Staff Attorney, OMS, Market Regulation, Commission, dated January 15, 1997 (''BSE Amendment No. 2''), making clear that approval of its proposal superseded its existing circuit breaker provisions.

[5] *See* Letter from Arthur B. Reinstein, Senior Attorney, CBOE, to Chester A. McPherson, Staff Attorney, OMS, Market Regulation, Commission, dated January 17 1997 (''CBOE Amendment No. 1''), revising its Rule 6.3B to delete references to specific moves in the DJIA, and adopting a more general rule stating that circuit breakers will be triggered on the CBOE whenever circuit breakers are triggered on the NYSE.

[6] *See* Letter from the Honorable Edward J. Markey, Member of Congress, the United States House of Representatives, to Arthur Levitt, Chairman, SEC, dated December 16, 1996 (''Markey Letter''). For a description of the Markey Letter, *see infra* part III.

[7] The National Association of Securities Dealers, Inc. (''NASD''), Cincinnati Stock Exchange (''CSE''), and the Pacific Stock Exchange, Incorporated (''PSE'') have general rules that require them to halt trading during the intermarket circuit breakers. *See infra* note 15. Consequently, they do not need to file conforming rule changes because their circuit breaker halts will automatically conform to the halt periods adopted by the other exchanges. *See* Letters to Howard L. Kramer, Associate Director, OMS, Market Regulation, Commission, from Adam W. Gurwitz, Director of Legal Affairs, CSE, dated January 3, 1997; from David P. Semak, Vice President, Regulation, PSE, dated January 14, 1997; and from Richard Ketchum, Chief Operating Officer and Executive Vice President, NASD, dated January 15, 1997.

[8] *See* Letter to Howard L. Kramer, Associate Director, OMS, Market Regulation, Commission, from Stephen A. Sherrod, Chief, Financial Instruments Unit, CFTC, dated December 20, 1996. *See also* Letters to Jean A. Webb, Secretary, CFTC, from Norman E. Mains, Senior Vice President, Chief Economist and Director of Research, Chicago Mercantile Exchange (''CME''), dated December 17, 1996; from Richard T. Pombonyo, Managing Director, New York Futures Exchange, Inc. (''NYFE''), dated December 16, 1996; and from Jeff C. Borchardt, Senior Vice President, Kansas City Board of Trade (''KCBT''), dated December 18, 1996. For example, the most actively traded stock index futures contract is the Standard & Poor's 500 (''S&P 500'') stock index futures contract traded on the CME. Currently, if the S&P 500 futures are limit offered at the 30-point price limit and the securities markets have instituted the half-hour trading halt, the S&P 500 futures also will halt trading. The same procedure applies at the 50-point price limit for the S&P 500 futures for the one-hour trading halt. The CME is raising the applicable price limits in the S&P 500 futures to 45 and 70 points to correspond to the new 350/550 DJIA point triggers in the securities markets. *See infra* note 27 for an additional explanation of how the futures price limits relates to circuit breaker trading halts.

[9] *See supra* note 6.

[10] *Id.*

[11] *Id.* The Commission notes that the NYSE has indicated that it does not intend to propose any changes at this time to its market volatility procedures that would become effective before a 350 point circuit breaker trigger could be reached. One of these sets of procedures, provided in NYSE Rule 80A (known as the ''Collar Rule''), places limits on index arbitrage program trading if the DJIA rises or falls 50 points from the previous day's closing value. The other set of procedures, known as NYSE's ''sidecar'' system, routes program orders into separate electronic files for a brief period if the futures contract on the S&P 500 stock index declines to 12 points below its previous settlement value, a move that is roughly equivalent to 100 points on the DJIA. With these ''speed bump'' procedures in place on the NYSE, as well as other circuit breakers at the derivative exchanges, the Commission does not believe it is necessary at this time to develop additional procedures to restrict trading prior to triggering of a circuit breaker trading halt.

[12] 15 U.S.C. 78f(b).

[13] In approving these rules, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

Exchanges.[14] The original circuit breaker rules provided that trading would halt in all securities markets for one hour if the DJIA declined by 250 points from its previous day's closing level and, thereafter, trading would halt for an additional two hours if on that same day the DJIA declined 400 points from its previous day's close. In July, 1996, these periods were reduced to one-half hour for a 250 point move and one hour for a 400 point move.[15] The original circuit breaker proposals were approved on a pilot basis, and have been extended on that basis since then.[16]

These market-wide circuit breakers were intended to provide market participants with an opportunity to reestablish an equilibrium between buying and selling interest by offering a temporary ''time-out'' period to become aware of and respond to a sudden, potentially destabilizing market decline. In approving the initial proposals, the Commission noted that an Interim Report of the Working Group on Financial Markets (''Working Group'') had recommended that in periods of rapid market decline that threaten to create panic conditions, trading halts and reopening procedures should be coordinated within the financial marketplace.[17]

Specifically, the Working Group recommended that all U.S. markets for equity and equity-related products—stocks, individual stock options, stock index options, and stock index futures—halt trading during such periods of market volatility.[18] These recommendations, in part, were in response to the events of October 19, 1987, when the DJIA declined over 22.6%. The futures exchanges also adopted analogous trading halts to provide coordinated means to address potentially destabilizing market volatility.[19]

As noted above, in July of 1996, the Commission approved proposals by the Exchanges to amend their circuit breaker rules to shorten the amount of time that trading is halted on the Exchanges when the DJIA has declined by 250 or 400 points.[20] Also, at that time, the Commission approved the elimination of references in the Exchanges' rules to the use of abbreviated reopening procedures following the implementation of circuit breakers.[21] In granting its approval of the shortened period for trading halts pursuant to circuit breakers, the Commission noted that advances in technology and increases in the operational capacity of the markets and heightened participants' ability to become aware of and respond to significant price movements within a much shortened period of time.

The Commission's approval of the July 1996 proposals constituted the first significant modification to the circuit breaker provisions since their adoption. In response to the July 1996 proposals, the Commission received four comment letters expressing general concern about the circuit breakers trigger levels, and raising a number of associated issues, including the belief that the trigger levels should be raised to reflect the growth in the market values since circuit breakers were initially adopted.[22] In approving the July 1996 proposals, the Commission recognized the commentators' issue regarding the appropriateness of the 250/400 trigger levels in a rising market and encouraged the Exchanges and members of the industry to continue evaluating the trigger levels for trading halts in light of the changing circumstances of the market since 1988.

Likewise, when the circuit breakers pilot programs were extended in October 1996, the Commission again, while reaffirming the utility of circuit breakers and the purposes they serve during periods of large, rapid market declines, expressed concern about whether the existing circuit breakers levels of 250 and 400 points in the DJIA (then reflecting a decline of approximately 4.1% and 6.6%) warranted market-wide halts.[23] Accordingly, the Commission recommended that the industry study these levels with a view of reaching a consensus on the size of increases in current trigger levels required to ensure that cross-market trading halts are imposed only during market declines of historic proportions. Further, the Commission indicated that the markets should submit their proposals for new trigger levels by February 3, 1997.

The current proposals by the Exchanges to expand the circuit breaker trigger levels to 350 and 550 points in the DJIA reflect the Exchanges' response to the Commission's recommendations. In their respective filings, the Exchanges noted that the proposed new levels of 350 and 550 points would represent approximately a 5.4% and 8.5% decline in the DJIA, respectively, reflecting significant market declines that they believe serve as appropriate levels to trigger a brief trading halt.[24]

The Exchanges' proposals are contingent on other markets adopting similar proposals.[25] In this regard, the Commission notes that all of the existing U.S. stock and options exchanges, as well as the NASD, have either submitted revised circuit breaker pilot programs or have agreed to comply with the provisions of such programs.[26]

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[14] *See* Securities Exchange Act Release Nos. 26198 (October 19, 1988), 53 FR 41637 (Amex, CBOE, NASD, and NYSE); 26218 (October 26, 1988), 53 FR 44137 (CHX); 26357 (December 14, 1988), 53 FR 51182 (BSE); 26368 (December 16, 1988), 53 FR 51942 (PSE); 26386 (December 22, 1988), 53 FR 52904 (Phlx); and 26440 (January 10, 1989), 54 FR 1830 (CSE).

[15] *See* Securities Exchange Act Release Nos. 37457 (July 19, 1996) 61 FR 39176 (NYSE); 37458 (July 19, 1996), 61 FR 39167 (Amex); and 37459 (July 19, 1996), 61 FR 39172 (BSE, CBOE, CHX, and Phlx).

[16] *See supra* note 14. The most recent extensions expire on April 30, 1997 for the Amex, NYSE and Phlx, *see* Securities Exchange Act Release No. 37890 (October 29, 1996) 61 FR 56983; and on October 31, 1997 for the BSE and CHX. *See* Securities Exchange Act Release No. 36414 (October 25, 1995) 60 FR 55630. The NASD's policy statement expires on December 31, 1997. *See* Securities Exchange Act Release No. 36563 (December 7, 1995), 60 FR 64084. The Commission approved on a permanent basis the proposals by the CBOE, PSE, and CSE. *See* Securities Exchange Act Release Nos. 26198 (October 19, 1988), 53 FR 41637 (CBOE); 26368 (December 16, 1988), 53 FR 51942 (PSE); and 26440 (January 10, 1989) 54 FR 1830 (CSE).

[17] The Working Group on Financial Markets was established by the President in March 1988 in response to the 1987 market break. It consisted of the Under Secretary for Finance of the Department of the Treasury and the Chairmen of the Commission, the Commodity Futures Trading Commission, and the Board of Governors of the Federal Reserve System. Its mandate was to determine the extent to which coordinated regulatory action was necessary to strengthen the nation's financial markets.

[18] *Id.*

[19] *See* Letter from Todd E. Petzel, Vice President, Financial Research, CME, to Jean A. Webb, Secretary, CFTC, dated September 1, 1988. *See also* Letters to Jean A. Webb, Secretary, CFTC, from Paul J. Draths, Vice President and Secretary, Chicago Board of Trade (''CBT''), dated July 29, 1988; Michael Braude, President, KCBT, dated August 10, 1988; and Milton M. Stein, Vice President, Regulation and Surveillance, NYFE, dated September 2, 1988.

[20] *See supra* note 15.

[21] *Id.*

[22] *See* Letter from William R. Rothe, Chairman, and John L. Watson III, President, Security Traders Association, to Jonathan G. Katz, Secretary, SEC, dated May 10, 1996 (''STA Letter''); Letter from Peter W. Jenkins, Chairman, and Holly A. Stark, Vice Chairman, Securities Traders Association's Institutional Committee, to Jonathan G. Katz, Secretary, SEC, dated May 7, 1996 (''STA Institutional Committee Letter''); Letter from Joseph R. Hardiman, President, NASD, to Jonathan G. Katz, Secretary, SEC, dated May 23, 1996 (''NASD Letter''); Letter from Paul Schott Stevens, Senior Vice President and General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC, dated May 23, 1996 (''ICI Letter'').

[23] These percentages are based on the DJIA close of 6094.23 on October 18, 1996.

[24] In arriving at these percentages (5.4% and 8.5%), the Exchanges estimated the DJIA to be approximately 6500.

[25] The Commission notes that the BSE and Phlx did not explicitly include this contingency in their filings.

[26] *See supra* part II. The NASD, CSE, and PSE have reaffirmed their policy statements to halt trading whenever circuit breakers are triggered.

The futures exchanges are also adopting analogous trading halts to maintain the existing coordinated means to address potentially destabilizing market volatility.[27] Thus, the Commission believes the contingency is satisfied.

In evaluating the new levels proposed by the Exchanges, the Commission notes that, when the circuit breaker rules were adopted in 1988, the 250-point and 400-point triggers represented one-day declines of 12% and 19%, respectively, in the DJIA. At current market levels, these triggers represent declines of approximately 3.7% and 6.0%, respectively.[28] The Commission believes that the maintenance of the trigger levels at 250 and 400 points for eight years, while the market has risen substantially, has acted to effectuate a significant *de facto* diminution of the price movement that would cause a market-wide trading halt.[29] Accordingly, the Commission has substantial doubt as to whether a 3.7% decline in the DJIA warrants a marketwide halt.

In support of this conclusion, the Commission notes the market decline of March 8, 1996, when the DJIA fell as much as 217 points (3.85%) on an intra-day basis. This decline represented the largest intra-day point decline since the adoption of circuit breakers. The Commission's consultations with market officials indicated that, even though volume was extremely heavy during the price decline on March 8, trading appears to have been orderly. There was no evidence of the types of systemic stress, as were present in the 1987 market break, warranting the one-hour market-wide trading halt that would have been imposed if the DJIA had reached the 250–point circuit breaker trigger.

In considering the Exchanges' current proposals to modify the circuit breaker trigger levels, the Commission also has taken into account the guidelines expressed by the Working Group when originally proposing the circuit breaker procedures in 1988. At that time, the Working Group indicated that pre-determined, coordinated, cross-market trading halts should be implemented so as to address market declines that threaten to result in *ad hoc* and potentially destabilizing market closings. The Working Group's report stressed that the circuit breaker trigger levels should be ''broad enough to be tripped only on rare occasions, but * * * sufficient to support the ability of the payment and credit systems to keep pace with extraordinary large market declines.'' Consequently, the Working Group recommended that the first market-wide trading halt be imposed only when the DJIA had declined by 250 points and that the second halt be imposed when the decline had reached a total of 400 points, levels that represented extraordinary declines of approximately 12% and 19%, respectively, in 1988.

The Working Group's report also cautioned that the circuit breaker trigger levels should be reviewed by market regulators periodically to adjust the point-decline triggers to ensure that market-wide halts would be imposed only after extraordinary market declines. The Working Group envisioned in 1988 that the circuit breaker levels would be reevaluated periodically and adjusted to reflect market levels.[30] In recent consultations, the Working Group has supported the Commission's determination that it is time to raise the current circuit breaker triggers.

Consequently, the Commission is approving the adoption of the new 350/550 trigger levels. The DJIA has tripled in value since circuit breaker trading halts were adopted in 1988. This rise in the market necessitates increases in the circuit breaker trigger levels so as to prevent their unnecessary application. The existing levels of 250/400 (approximately 3.7% and 6.0%) are far below the percentage originally adopted (approximately 12% and 19%). While the 350/550 levels on a percentage basis are below the percentages represented by 250/400 points in 1988, the Commission believes that increasing the trigger levels better reflects the state of the market than current levels. The trigger levels should reflect an extraordinary decline under current market conditions. The 350/550 trigger levels more accurately meet this standard than the 250/400 point triggers.

The Commission recognizes that the Exchanges have been cautious in their efforts to raise the circuit breaker triggers and that the proposed new triggers of 350/550 points represent approximately a 40% increase in trigger levels. Nevertheless, the Commission believes that the Exchanges' determinations regarding the new trigger levels represent a substantial improvement over the current trigger levels and reduce the Commission's concerns that the market-wide circuit breaker trading halts should not be triggered except during extraordinary market declines.

As has been done in the past, the Commission is approving these changes on a pilot basis. In addition, the Commission finds good cause for approving the proposals by the CHX, BSE, Phlx, and CBOE's Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. These proposals are analogous to the circuit breaker proposals published in the Federal Register, for the full statutory period, by the NYSE, Amex, and CBOE.[31] The Commission believes that it is important that the Exchanges' circuit breaker procedures be approved simultaneously to preserve the existence of uniform market-wide circuit breaker provisions. Accordingly, the Commission believes that granting accelerated approval of the proposals and the amendments thereto is appropriate and consistent with Sections 6(b)(5) and 19(b)(2) of the Act.

The proposals being approved today effectively supersede and replace the existing circuit breaker pilot provisions of the respective Exchanges.[32] The Commission is approving each of the Exchanges' revised circuit breaker rules for a one-year period becoming effective on February 1, 1997, and remaining in force until January 31, 1988.[33] The

[27] If the ratio of 8–to–1 is used (8 DJIA points to 1 S&P 500 index point), then the CME's proposed price limits of 45 and 70 points correspond approximately to the 350 and 550 points circuit breaker trigger levels proposed by the equity Exchanges. The Commission notes that on a percentage basis, however, the 45-point limit on the CME would reflect a slightly greater percentage decline in the S&P 500 index than would the 350-point decline in the DJIA. The same is true for the 70-point limit in the S&P 500 futures and the 550-point circuit breaker trigger in the DJIA. While this poses a slight possibility that trading on the futures exchanges may not halt at the same time as trading on the stock exchanges, experience indicates that futures generally fall faster than stocks during periods of severe market declines and thus the futures price limits are more likely to be triggered ahead of the circuit breakers. Consequently, the CME's proposed limits appear to be in line with the trigger levels in the securities markets.

[28] These figures are based on the DJIA close of 6696.48 on January 24, 1997.

[29] The Commission also notes the concern raised in the Markey Letter that the 550 points circuit breaker would be greater than the 508 points decline experienced during the October 1987 crash. However, relative to the DJIA of October 1987, a 508 points decline is approximately a 22.63% decline, whereas, relative to the DJIA of January 1992, a 550 points decline is the equivalent of a 8.2% decline.

[30] *See supra* note 17.

[31] *See supra* part I.

[32] The AMEX, CHX, and Phlx have submitted letters clarifying certain potential ambiguity contained in the originally filed proposals, by making clear that the proposals approved today supersede each Exchanges' existing circuit breaker provisions. *See* Letters to Michael A. Walinskas, Senior Special Counsel, Market Regulation Commission, from Michael Cavalier, Associate General Counsel, Legal and Regulatory Policy, Amex, dated January 16, 1997; from David T. Rusoff, Esq., Foley & Lardner, CHX, dated January 16, 1997; and from Philip H. Becker, Senior Vice President, Chief Regulatory Officer, Phlx, dated January 17, 1997.

[33] The CBOE, in its Amendment No. 1, revised the language to its circuit breaker rule, deleting

Commission expects the markets to continually reevaluate the circuit breaker trigger levels in order to prevent imposing cross-market trading halts that are not justified by the overall magnitude of a market decline. Accordingly, the Commission will work with the markets to develop procedures for reevaluating the circuit breaker triggers on at least an annual basis. In this connection, the Commission requests that within ten months of the date of this order the markets submit their respective recommendations for the trigger levels that will be used upon expiration of the 350/550 levels one year from this order.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning BSE Amendment No. 2, SR–Phlx–97–03, and CBOE Amendment No. 1. 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 at the Commission's Public Reference section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchanges. All submissions should refer to BSE Amendment No. 2, SR–Phlx–97–03, and CBOE Amendment No. 1 and should be submitted by February 28, 1997.

VI. Conclusion

For the reasons discussed above, the Commission believes the proposals by the Exchanges to amend their circuit breaker trigger levels are consistent with Section 6(b)(5) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[34] that the proposed rule changes (SR–NYSE–96–38, SR–Amex–96–49, SR–BSE–96–12, SR–CBOE–96–78, SR–CHX–96–33, and SR–Phlx–97–03) are hereby approved to become effective on February 1, 1997 and will remain in force until January 31, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[35]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

language that referred to the applicable DJIA trigger levels. Instead, the CBOE proposes the adoption of new language that would impose circuit breaker trading halts on the CBOE whenever such halts are in effect on the NYSE. *See supra* note 5. The Commission notes that because the CBOE has determined to adopt this piggyback approach, and their circuit breaker rule is currently approved on a permanent basis, it should generally not be necessary for the CBOE to file conforming rule changes to revise specific circuit breaker trigger levels after the adoption of its current proposal.

[34] 15 U.S.C. 78s(b)(2).

[35] 17 CFR 200.30–3(a)(12).

[Release No. 34–38225; File No. SR–NYSE–96–32]

Self-Regulatory Organizations; New York Stock Exchange, Incorporated; Approval of Proposed Rule Change Relating to the Exchange's Policy on Tape Indications

January 31, 1997.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 26, 1996, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change relating to the Exchange's policy on tape indications. The proposal was published for comment in the Federal Register on December 10, 1996.[2] No comments were received on the proposed rule change. The Commission is approving the proposed rule change.

II. Description of the Proposal

The NYSE proposed to amend the Exchange Policy on Indications, Openings and Reopenings, which will be issued as an Information Memorandum. Indications are price ranges published on the tape before or during a trading halt to display the probable price range in which a stock will open or reopen.

The Exchange's policy on dissemination of tape indications currently requires a minimum of 15 minutes elapse between the first indication and the opening or reopening of a stock. In addition, when multiple indications are used, a minimum of 10 minutes must elapse after the last indication when it does not overlap the prior indication; a minimum of 5 minutes must elapse after the last indication when it overlaps the prior indication. In all cases, a minimum of 15 minutes must elapse between the first indication and the opening or reopening of a stock.

The Exchange proposed that these minimum time periods before opening or reopening a stock be compressed from 15 to 10 minutes after the first indication; and to 5 minutes after the last indication, regardless of whether it overlaps the prior indication, provided that a minimum of 10 minutes elapse between the first indication and the opening or reopening of a stock. The Exchange indicated that it believes that a minimum time period of 10 minutes for dissemination has proven sufficient in other contexts, such as the publication of imbalances of 50,000 shares or more of market-on-close orders on trading days other than expiration days.

The Exchange stated that over the years, in developing procedures for openings, it has focused on providing a balance between timeless and appropriateness of price, *i.e.*, achieving a price that reflects an appropriate equilibrium of buying and selling interest at the time. The Exchange noted that since current procedures were formulated, the speed of communications has increased, meaning that relevant market information can be disseminated and responded to very quickly. The Exchange believes that the proposed rule change would shorten the time period for indications, thereby allowing the opening or reopening of a stock in a more expeditious fashion, while still providing sufficient time for appropriate pricing of orders.

The Exchange believes that the revised procedures for tape indications strike an appropriate balance between preserving the price discovery process while providing timely opportunities for investors to participate in the market.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5) of the Act.[3] The proposed rule change is designed to promote just an equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market,

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

[2] Securities Exchange Act Release No. 38015 (December 3, 1996), 61 FR 65099 (December 10, 1996).

[3] 15 U.S.C. 78f(b)(5).