

result in more efficient compliance with such rules. Accordingly, the proposal does not raise any new or unique regulatory issues. For these reasons, the Commission believes there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act, to approve the proposed rule change on an accelerated basis.

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 NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 6, 1996.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change (SR-CBOE-96-25) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-37190; File No. SR-NASD-96-11]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments to the Primary Maker Standards

May 9, 1996.

On March 27, 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 ("Act")¹ and Rule 19b-4 thereunder.² The rule change amends the Primary Market Maker ("PMM") Standards rule by deleting a provision of the rule that allows a market maker to qualify as a PMM in a security by registering in that security and refraining from quoting that security for five days.³

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 37062, April 2, 1996) and by publication in the Federal Register (61 FR 15885, April 9, 1996). No comment letters were received. This order approves the proposed rule change.

On June 29, 1994, the Commission approved on a pilot basis the NASD's short sale rule governing short sales in Nasdaq National Market ("NNM") securities ("Short Sale Rule").⁴

The Short Sale Rule prohibits member firms from effecting short sales⁵ at or below the current inside bid as disseminated by the Nasdaq system whenever that bid is lower than the previous inside bid.⁶

¹ 15 U.S.C. § 78s(b)(1).

² 17 CFR 240.19b-4.

³ NASD Manual, Rules of Fair Practice, Art. III, Sec. 49 (CCH) ¶ 22001.

⁴ See Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994) (approving, *inter alia*, Article III, Section 48 to the NASD Rules of Fair Practice). The pilot has been approved to continue through August 3, 1996. See Securities Exchange Act Release No. 36532 (Nov. 30, 1995), 60 FR 62519 (Dec. 6, 1995).

⁵ A short sale is a sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller. To determine whether a sale is a short sale members must adhere to the definition of a "short sale" contained in SEC Rule 3b-3, which rule is incorporated into Nasdaq's short sale rule by Article III, Section 48(l)(1) of the NASD Rules of Fair Practice.

⁶ Nasdaq calculates the inside bid and the best bid from all market makers in the security (including bids on behalf of exchanges trading Nasdaq securities on an unlisted trading privileges basis), and disseminates symbols to denote whether the current inside bid is an "up bid" or a "down bid." Specifically, an "up bid" is denoted by a green "up" arrow symbol and a "down bid" is denoted by a red "down" arrow. Accordingly, absent an exemption from the rule, a member can not effect a short sale at or below the inside bid in a security in its proprietary account or an account of a customer if there is a red arrow next to the security's symbol on the screen. In order to effect a "legal" short sale on a down bid, the short sale must be executed at a price at least a 1/16th of a point above the current inside bid. Conversely, if the security's symbol has a green "up" arrow next to it, members can effect short sales in the security without any restrictions. The rule is in effect during

The short sale rule provides an exemption to so-called "qualified" Nasdaq market makers ("market maker exemption") to ensure that the rule does not constrain market making activities that provide liquidity and continuity to the market.⁷ The market maker exemption is limited to transactions made in connection with bona fide market making activity. A market maker that does not satisfy the requirements for a qualified market maker can remain a market maker but cannot rely upon the market maker exemption when effecting short sales of a NNM security.

A "qualified" Nasdaq market maker is currently defined to be a market maker that satisfies the criteria for a PMM found in Section 49 of the NASD Rules of Fair Practice.⁸ A market maker may qualify as a PMM if it satisfies at least two of the following four criteria: (1) the market maker must be at the best bid or best offer as shown on the Nasdaq system 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 1 1/2 times its "proportionate" volume in the stock.⁹ A market maker also may qualify as a PMM in a security by registering in the security and refraining from quoting the security for five days ("five-day quotation delay rule"). A "P" indicator is displayed next to the market maker identification of a market maker that qualifies as a PMM.

Market makers are reviewed each month to determine whether they have satisfied the PMM performance standards. If a PMM has not satisfied the threshold standards after a particular review period, its PMM designation is removed commencing on the next business day following notice of failure to comply with the standards. A market maker that loses its PMM designation may requalify for PMM designation by satisfying the threshold standards for the next review period.

normal domestic market hours (9:30 a.m. to 4:00 p.m.; Eastern Time).

⁷ Article III, Section 48(c)(1).

⁸ Before the PMM standards went into effect, a "qualified market maker" was defined to be a market maker that had entered quotations in the relevant security on an uninterrupted basis for the preceding 20 business days, the so-called "20-day test."

⁹ For example, if there are 10 market makers in a stock, each dealer's proportionate share volume would be 10 percent; therefore, 1 1/2 times proportionate share volume would mean 15 percent of overall volume.

⁶ 15 U.S.C. § 78s(b)(2) (1988).

⁷ 17 CFR § 200.30-3(a)(12).

A market maker may register as a market maker in a NNM security and become a PMM immediately if it is a PMM in at least 80% of the securities in which it makes a market. If a market maker does not meet the 80% threshold, it can either comply with the five-day quotation delay rule or it can register in the security as a regular Nasdaq market maker, enter quotes immediately, and satisfy the qualification criteria for the next review period.

The NASD stated in its filing that the five-day quotation delay rule originally was intended to ensure that market makers were not registering in a security to take advantage of momentary short-selling opportunities. However, the NASD expressed concern in its filing that market making affiliates of the same firm are able to use the five-day quotation delay rule to circumvent the application of the PMM standards by "swapping" lists of stocks in which they make a market and alternatively receive PMM designation without ever meeting the quantitative PMM standards. The NASD also expressed concern in its filing that market makers are able to use the five-day quotation delay rule to inflate the percentage of stocks in which they are a PMM above the 80 percent level, thereby entitling them to PMM status for all NNM securities in which they register during the next month. In both instances, the five-day quotation delay rule would allow a market maker to become a PMM for reasons wholly unrelated to the quality of its market-making.¹⁰ Therefore, the NASD has proposed to amend the Primary Market Maker ("PMM") Standards rule by deleting the five-day quotation delay rule.

The Commission finds that the rule change is consistent with the provisions of section 15A(b)(6) of the Act. The rule change is designed to prevent fraudulent and manipulative acts and practices, 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 by ensuring that market makers qualify for PMM status only if they have met certain performance standards. The rule change also is reasonably designed to ensure that a market maker's short sale transactions are made in connection with bona fide market making activity.

¹⁰ The NASD stated in its filing that few market makers have utilized the five-day quotation delay rule to become PMMs.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-NASD-96-11 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-37188; International Series Release No. 976: File No. SR-NYSE-96-08]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Commodity Indexed Preferred Securities

May 9, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 8, 1996, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the NYSE. This Order approves the proposed rule change on an accelerated basis and also solicits comments on the proposed rule change from interested persons.

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

The Exchange proposes to list under Paragraph 703.19 of the Listed Company Manual ("Manual") Commodity Futures Index Preferred Securities ("Securities"). The Securities are intermediate term securities whose value will be linked, in part, to changes in the 11 individual commodities (or the futures contracts overlying such commodities) that comprise the J.P. Morgan Commodity Index or its subindices.

The Securities either will be linked: (1) directly to the price of a futures contract on the commodity, (2) to an "Excess Return Index" of the commodity, or (3) to a "Total Return Index" of the commodity. An Excess Return Index represents the cumulative returns of investing in unleveraged positions in nearby commodity futures contracts and constantly rolling the position forward to the next designated

contract as the contract nears expiration. The Total Return Index consists of the Excess Return Index plus the return on three-month Treasury Bills.

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 NYSE 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. NYSE 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

The Exchange proposes to list the Securities pursuant to Para. 703.19 of the Manual. Under Para. 703.19, the issuer will be either a listed company, an affiliate of a listed company or a company that meets NYSE listing criteria. It currently is anticipated that the issuer will be a financing subsidiary of a listed company.

The Securities. The Securities will be preferred securities or debt securities with a term of two to ten years listed pursuant to Para. 703.19 of the Manual. The redemption price of the Securities will be based, in part, on the 10-day average level of the value of the underlying individual commodity (or futures contract) during the 20 days prior to maturity of the Securities. At redemption, holders will receive par value times a percentage calculated by dividing the ending value of the underlying commodity (or futures contract) by the beginning value of the underlying commodity (or futures contract). Such percentage may be greater or less than 100 percent and, therefore, at redemption, the holder could receive less than the original issue amount of the Securities.¹ The following chart describes the linked contracts:

¹ The underwriter of the Securities has advised the NYSE that the Securities will comply with the "hybrid exemption" of the Commodity Futures Trading Commission ("CFTC"), 17 CFR part 34. The underwriter has further advised the Exchange that it has presented a description of the structure and sample term sheet of the Securities to the staff of the CFTC, who have not raised any objections.

¹¹ 17 CFR 200.30-3(a)(12).