

that approval of the proposal through January 31, 1997 meets the above standards. Specifically, the Commission believes that the current minimum exposure limit and automated quotation update feature are appropriate while the Commission considers NAqcess, the NASD's latest proposal for handling small orders from retail customers.¹¹

The Commission believes that a sufficient basis exists for approving the NASD's proposal to continue the current operation of SOES.¹² The system provided and continues to provide retail investors, through automation, an enhanced opportunity to obtain execution of orders in size up to 1,000 shares and, accordingly, has improved access to the Nasdaq market.

In addition, as a result of the March 1995 Amended SOES Rules, the SOES minimum exposure limit was increased from 1,000 shares to 2,000 shares. Moreover, the March 1995 Amended SOES Rules continued the methodology for calculating a market maker's outstanding exposure limit that excluded orders executed pursuant to a preferencing arrangement. Under the SOES Rules prior to the January 1994 Amended SOES Rules, both preferred and unpreferred orders were considered when calculating a market maker's remaining exposure limit. Thus, in relative terms, the 2,000 share exposure limit potentially provides greater liquidity under certain conditions¹³ compared to the pre-January 1994 Amended SOES Rules' 5,000 share minimum exposure limit.

The Commission continues to believe that the current operation of SOES has

execution. Congress granted the Commission "broad, discretionary powers" and "maximum flexibility" to develop a national market system and to carry out these objectives. Furthermore, Congress gave the Commission "the power to classify markets, firms, and securities in any manner it deems necessary or appropriate in the public interest or for the protection of investors and to facilitate the development of subsystems within the national market system." S. Rep. No. 75, 94th Cong., 1st Sess. 7 (1975).

¹¹ See Securities Exchange Act Release Nos. 36548 (December 1, 1995), 60 FR 63092 (December 8, 1995); and 37302 (June 11, 1996) 61 FR 3154 (June 20, 1996). The comment period for the NAqcess proposal, as amended, closed on July 26, 1996, and to date the Commission has received approximately 600 comments on the proposal. The Commission's evaluation of the NAqcess proposal may affect its evaluation of any future submissions relating to SOES.

¹² In reaching this conclusion, the Commission does not rely on the data or economic analysis submitted by the NASD. See Securities Exchange Act Release Nos. 35275 (Jan. 25, 1995), 60 FR 6327 (Feb. 1, 1995); 35535 (March 27, 1995), 60 FR 16690 (March 31, 1995); 36311 (September 29, 1995), 60 FR 52438 (October 6, 1995); and 36795 (January 31, 1996) 61 FR 4504 (February 6, 1996).

¹³ That is, depending upon the mix of preferred and unpreferred orders.

eliminated economically significant restrictions imposed on order entry firms by the January 1994 Amended SOES Rules. The Commission believes that while the proposal does not restore the pre-January 1994 Amended SOES Rules' minimum exposure limit, it provides customers fair access to the Nasdaq market and reasonable assurance of timely executions. In this regard, the maximum order size is consistent with the Firm Quote Rule¹⁴ and the size requirement prescribed under the NASD rules governing the character of market maker quotations.¹⁵ Moreover, a market maker's minimum exposure limit for unpreferred orders is double its minimum size requirement prescribed under these rules.

The Commission also believes that extending the automated update function is consistent with the Act and, in particular, the Firm Quote Rule.¹⁶ The update function provides market makers the opportunity to update their quotations automatically after executions through SOES; under the Commission's Firm Quote Rule, market makers are entitled to update their quotations following an execution and prior to accepting a second order at their published quotes.¹⁷

IV. Conclusion

As indicated above, the Commission has determined to approve the extension of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature through January 31, 1997. In light of the balance of factors described above, the Commission believes extension of the reduction in the minimum exposure limit, the limitation of the exposure limit to unpreferred orders, and the provision for an automatic quotation update feature are consistent with the Act.

The Commission, in the exercise of the authority delegated to it by

¹⁴ 17 CFR 240.11Ac1-1(c).

¹⁵ *NASD Manual*, Schedules to the By-Laws, Schedule D, Part V, Sec. 2(a), (CCH) ¶ 1819.

¹⁶ The SOES automated update function is also consistent with the NASD's autoquote policy which generally prohibits autoquote systems, but allows automatic updating of quotations "when the update is in response to an execution in the security by that firm." *NASD Manual*, Schedules to the By-Laws, Schedule D, Part V, Sec. 2 (CCH) ¶ 1819.

¹⁷ The Firm Quote Rule requires market makers to execute orders at prices at least as favorable as their quoted prices. 17 CFR 11Ac1-1(c)(2). The Rule also allows market makers a reasonable period of time to update their quotations following an execution; allows market makers to reject an order if they have communicated a quotation update to their exchange or association; and provides for a size limitation on liability at a given quote. 17 CFR 240.11Ac1-1(c)(3)(ii). See also, Securities Exchange Act Release No. 14415 (Jan. 26, 1978), 43 FR 4342 (Feb. 1, 1978).

Congress, and in light of its experience regulating securities markets and market participants, has determined that approval of these changes to the SOES Rules until January 31, 1997 is consistent with maintaining investor protection and fair and orderly markets, and that these goals, on balance, outweigh possible anti-competitive effects on order entry firms and their customers.

Accordingly, the Commission finds that the rule change is consistent with the Act and the rules and regulations thereunder applicable to the NASD and, in particular, Sections 15A(b)(6), 15A(b)(9), and 15A(b)(11).

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the Federal Register. In addition to the reasons discussed in this order, the Commission believes that accelerated approval of the NASD's proposal is appropriate given the fact that the proposal is an extension of the amended SOES Rules that have been in effect since March 1995; that the information presently before the Commission leads to the conclusion that the current minimum exposure limit and automated quotation update function are appropriate features for SOES while the Commission considers the NASD's NAqcess proposal; and that without Commission action on or before July 31, 1996, the SOES rules would revert to those in effect prior to January 1994, resulting in a temporary lapse in continuity.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the instant rule change SR-NASD-96-22 be, and hereby is, approved, effective August 1, 1996 through January 31, 1997.

By the Commission.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 96-19902 Filed 8-5-96; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-37499; File No. SR-NYSE-96-20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Retroactive Reduction of the Odd-Lot Equity Transaction Charges and the Specialist Odd-Lot Charge

July 30, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),¹ notice is hereby given that on July 23, 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, 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.

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

The proposed amendment would make retroactive, to January 1, 1996, the new fee schedule for Odd-Lot Equity Transaction Charges and the Specialist Odd-Lot Charge that was the subject of SR-NYSE-96-14 and was approved by the SEC by Release Number 34-37430 dated July 12, 1996.²

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 IV 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

This rule change proposes to apply the recent reduction of odd-lot fees retroactively to January 1, 1996, thus conferring a benefit upon the members of the Exchange and responding to the needs of our constituents with respect to overall competitive market conditions.

2. Statutory Basis

The Exchange believes the basis under the Act for the proposed rule change is the requirement under Section 6(b) (4)³ that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons during using its services.

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

The Exchange believes the proposed rule change will impose no burden on competition that is not necessary or appropriate in the 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

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the 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 self-regulatory organization consents, the Commission will:

(A) By order approve the 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Also, copies of such filing will be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-96-20 and should be submitted by August 27, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-19903 Filed 8-5-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37507; File No. SR-NYSE-96-18]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Pilot for Entry of Limit-at-the-Close Orders

July 31, 1996.

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 July 1, 1996, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change and on July 31, 1996, filed Amendment No. 1 to the proposed rule change,³ 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 simultaneously publishing an order granting accelerated approval of the proposed rule change.

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

The proposed rule change would extend the current pilot⁴ for the entry of limit-at-the-close ("LOC") orders to offset a published market-at-the-close ("MOC") order imbalance of 50,000

¹ 17 C.F.R. 200.30-3(a)(12).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ See Letter from James E. Buck, Senior Vice President and Secretary, NYSE to Michael Walinskas, Senior Special Counsel, SEC, dated July 30, 1996.

⁵ See Securities Exchange Act Release No. 35854 (June 16, 1995), 60 FR 32723.

¹ 15 U.S.C. 78s(b)(1).

² The Commission notes that, in File No. SR-NYSE-96-14, the NYSE incorporated odd-lot orders into its "no charge" policy for SuperDot equity public agency transactions, but excluded odd-lot orders of nonmember competing market makers from this policy. In addition, the NYSE lowered the Specialist Odd-Lot Charge from \$0.004 per share to \$0.00135 per share. See Securities Exchange Act Release No. 37430 (July 12, 1996), 61 FR 37784. See also Securities Exchange Act Release No. 37273 (June 4, 1996), 61 FR 29438 (allowing the NYSE to exclude the orders of nonmember competing market makers from its "no charge" policy).

³ 15 U.S.C. 78f(b)(4).