

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38885; File No. SR-NASD-97-48]

### Self-Regulatory Organizations; Notice of Filing of and Order Granting Accelerated Approval to a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Adjustment of Open Orders

July 30, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 8, 1997, the NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments from interested persons to grant accelerated approval to the proposal rule change.

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

NASD Regulation is proposing to amend Rule 3220 of the National Association of Securities Dealers, Inc. ("NASD" or "Association") to permit members to adjust the price of open orders as a result of dividends, payments, or distributions in a manner consistent with their ability to quote prices generally. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in *brackets*.

#### Rule 3220. Adjustment of Open Orders

(a) A member holding an open order from a customer or another broker/dealer shall, prior to executing or permitting the order to be executed, reduce, increase or adjust the price and/or number of shares of such order by an amount equal to the dividend, payment or distribution, on the day that the security is quoted ex-dividend, ex-rights, ex-distribution or ex-interest, except where a cash dividend or distribution is less than one cent (\$.01), as follows:

(1) In the case of a cash dividend or distribution, the price of the order shall be reduced by subtracting the dollar amount of the dividend or distribution from the price of the order and rounding the result to the next lower [ $\frac{1}{8}$  of a dollar] *minimum quotation variation used in the primary market, provided*

*that if there is more than one minimum quotation variation in the primary market, then the greater of the variations shall be used (e.g., if a market has minimum quotation variations of  $\frac{1}{16}$  or  $\frac{1}{32}$  of a dollar, depending on the price of the security, then the adjustment to open orders shall be in increments of  $\frac{1}{16}$  of a dollar);*

(2) In the case of a stock dividend or split, the price of the order shall be reduced by rounding the dollar value of the stock dividend or split to the next higher [ $\frac{1}{8}$  of a dollar] *minimum quotation variation used in the primary market as specified in paragraph (a)(1)* and subtracting that amount from the price of the order; provided further, that the size of the order shall be increased by (A) multiplying the size of the original order by the numerator of the ratio of the dividend or split, (B) dividing the result by the denominator of the ratio of the dividend or split, and (C) rounding the result to the next lower round lot; and

\* \* \* \* \*

#### 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 proposed rule change is a technical amendment to NASD Rule 3220 of the Conduct Rules of the NASD that is necessary to permit members to adjust the price of open orders as a result of dividends, payments, or distributions by a consistent, minimum quotation variation. Current NASD Rule 3320 permits adjustments to the price of open orders in  $\frac{1}{8}$  of a dollar increments only. Recently, The Nasdaq Stock Market ("Nasdaq"), the American Stock Exchange ("Amex"), and the New York Stock Exchange ("NYSE") reduced the minimum quotation variation to  $\frac{1}{16}$  of a dollar or less. The proposed rule change is necessary to permit greater consistency between the prices at which

securities may be quoted and the price adjustments that may be made to open orders. Moreover, in light of the fact that Nasdaq recently requested comment concerning the effects of decimal pricing and the NYSE recently announced that it would commence quoting listed securities in decimals by the year 2000, NASD Regulation's proposed amendment to NASD Rule 3220 anticipates even smaller quotation variations. Specifically, the proposed rule change specifies that adjustments to the price of open orders may be made to the next lower (or higher) *minimum quotation variation* used in the primary market for the security. The term "primary market" for purposes of Rule 3220 would be The Nasdaq Stock Market for Nasdaq-listed securities, the NYSE for NYSE-listed securities, the Amex for Amex-listed securities, and for securities listed solely on other markets, the market on which the majority of trading takes place. The proposed rule change also provides that in situations where there is more than one minimum quotation variation used in a primary market, the greater minimum quotation variation should be used. NASD Regulation believes that having only one minimum variation by which to adjust all open orders provides members with a greater ease of administration than a system in which open orders on the same primary market may be adjusted by different variations. For example, Nasdaq securities whose bid is \$10 or more are quoted with minimum variations of  $\frac{1}{16}$  of a dollar, whereas securities whose bid is below \$10 may be quoted with minimum variations of  $\frac{1}{32}$  of a dollar. Rather than have members adjust the price of open orders by  $\frac{1}{16}$  or  $\frac{1}{32}$  of a dollar depending on the bid price of the security, the proposed rule change would have members adjust all open orders by increments of  $\frac{1}{16}$  of a dollar.

###### 2. Statutory Basis

NASD Regulation believes the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.<sup>2</sup>

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

NASD Regulation believes the proposed rule change will impose no

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. § 78o-3.

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*

NASD Regulation has neither solicited nor received written comments.

**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, DC 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 Room, 450 Fifth Street NW., Washington, DC 20549. Also, copies of such filing will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-97-48 and should be submitted by August 28, 1997.

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

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. In particular, the proposed rule change satisfies the requirements of Section 15A of the Act.<sup>3</sup>

Recently, there has been a movement within the securities industry to reduce the minimum trading and quotation increments imposed by the various self-regulatory organizations. As noted previously, the Amex, Nasdaq, and the NYSE have recently reduced their minimum increments.<sup>4</sup> The proposed

rule change modifies the NASD's rule regarding the adjustment of open orders so that it can accommodate this transition to finer increments. This should promote greater consistency between the prices at which securities may be quoted and the price adjustments made to open orders in securities quoted "ex-."

The Commission notes, however, that the NASD's proposed use of the greatest minimum variation for adjusting open orders, rather than the minimum variation applicable to the particular security, is inconsistent with the practices employed by other markets.<sup>5</sup> This disparity could result in orders for the same security at the same price in different markets being rounded differently and, thus, could shift the priority among orders that were formerly on parity.<sup>6</sup>

Nevertheless, the method chosen by NASD Regulation comports with the Act. By permitting NASD members to apply the same increment to all open orders for securities quoted "ex-," the proposal should facilitate the ability of NASD members to quickly adjust such orders.

The Commission 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**. NASD members have already begun quoting stocks in increments finer than an eighth. The proposed rule change facilitates the NASD's transition to finer increments. Requiring NASD members to utilize

(approving an Amex proposal to reduce the minimum trading increment from  $\frac{1}{8}$  to  $\frac{1}{16}$ ); 38678 (May 27, 1997), 62 FR 30363 (June 6, 1997) (approving a proposed rule change by the NASD to reduce the minimum quotation increment from  $\frac{1}{8}$  to  $\frac{1}{16}$ ); 38744 (June 18, 1997), 62 FR 34334 (June 25, 1997) (approving an NYSE proposal to reduce the minimum trading increment from  $\frac{1}{8}$  to  $\frac{1}{16}$ ).

<sup>5</sup> For example, both the NYSE and the Chicago Stock Exchange ("CHX") require their specialists to utilize the increment in which bids (offers) are made when adjusting open orders for securities quoted "ex-." See CHX Article XX, Rule 35 and NYSE Rule 118.21.

<sup>6</sup> For example, two parties may enter orders to buy the same security for \$9, but one order is placed with a CHX specialist and the other is placed with a Nasdaq market maker. Assume further that the issuer declares a \$0.15 dividend. The CHX order would be rounded down by  $\frac{3}{32}$  to \$8 $\frac{27}{32}$  (\$8.84375, the closest applicable minimum trading variation) whereas the Nasdaq market maker would round its \$9 order down by  $\frac{3}{16}$  to 8 $\frac{13}{16}$  (\$8.8125, the closest applicable variation based on Nasdaq's largest variation, notwithstanding that Nasdaq allows securities under \$10 to be quoted in  $\frac{1}{32}$ s). The end result is that the CHX order will obtain price priority over an order that it was on parity with before the security was quoted "ex-." Moreover, this shift in priority is not the result of a conscience decision by a customer to relinquish priority but rather is attributable to the fact that the adjustment technique utilized by Nasdaq is inconsistent with other markets.

eighths when adjusting open orders for securities quoted "ex-" until the full statutory review period has elapsed would unnecessarily inhibit the NASD's transition to finer increments. Therefore, the Commission believes it is consistent with Section 19(b)(2) of the Act to grant accelerated approval to the proposed rule change.<sup>7</sup>

**V. Conclusion**

*It is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-NASD-97-48) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-38890] ; File No. SR-Philadep-97-03]

**Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change to Appoint the Canadian Depository for Securities Limited as a Correspondent Depository**

July 30, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 18, 1997, the Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange Commission ("Commission") and on April 24, 1997, filed an amendment to the proposed rule change as described in Items I and II below, which Items have been prepared primarily by Philadep. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change through October 31, 1997.

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

The purpose of the proposed rule change is to extend temporary approval of the appointment of The Canadian

<sup>7</sup> 15 U.S.C. § 78s(b)(2).

<sup>8</sup> *Id*

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s (b)(1).

<sup>3</sup> 15 U.S.C. § 78o-3. In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* § 78c(f).

<sup>4</sup> Securities Exchange Act Release Nos. 38571 (May 5, 1997), 62 FR 25682 (May 9, 1997)