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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41704; File No. SR–NASD–99–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2 and 3 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Margin for Exempted Borrowers, Good Faith Accounts, Joint Back Office Arrangements and Options Transactions

August 4, 1999.

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 January 19, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), 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 NASD Regulation. NASD Regulation amended its proposal on June 1, 1999, July 7, 1999, and July 15, 1999.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

NASD Regulation is proposing to amend NASD Rule 2520, ''Margin Requirements,'' to revise the margin requirements for exempted borrowers, good faith accounts, joint back office arrangements and options transactions. The text of the proposed rule change is as follows (additions are italicized; deletions are bracketed):

2520. Margin Requirements

(a) Definitions

For purposes of this paragraph, the following terms shall have the meanings specified below:

* * * * *

(*3*) The term ''customer'' means any person for whom securities are purchased or sold or to whom securities are purchased or sold whether on a regular way, when issued, delayed or future delivery basis. it will also include any person for whom securities are held or carried and to or for whom a member extends, arranges or maintains any credit. The term will not include *the following: (A)* a broker or dealer from whom a security has been purchased or to whom a security has been sold for the account of the member or its customers *[.], or (B) and ''exempted borrower'' as defined by Regulation T of the Board of Governors of the Federal Reserve System (''Regulation T''), except for the proprietary account of a broker-dealer carried by a member pursuant to paragraph (e)(6) of this Rule.*

(b) Initial Margin

For the purpose of effecting new securities transactions and commitments, the customer shall be required to deposit margin in cash and/or securities in the account which shall be at least the greater of:

(1) the amount specified in Regulation T[of the Boad of Governors of the Federal Reserve System]; or

* * * * *

Withdrawals of cash or securities may be made from any account which has as debit balance, ''short'' position or commitments, provided it is in compliance with Regulation T [of the Board of Governors of the Federal Reserve System] and after such withdrawal the equity in the account is at least the greater of $2,000 or an amount sufficient to meet the maintenance margin requirements of this paragraph.

(c) Maintenance Margin

The margin which must be maintained in [margin] *all*[4] accounts of customers, *except for cash accounts subject to other provisions of this rule,* shall be as follows:

* * * * *

[(5) In the case of securities listed on the Emerging Company Marketplace of the America Stock Exchange (AMEX), 100 percent of the market value in cash, of each security held ''long'' in the account, unless the AMEX determines that the security satisfies the criteria enumerated in Sections 220.17(a) and (b) of Regulation T of the Board of Governors of the Federal Reserve System for inclusion and continued inclusion on the List of OTC Margin Stocks, except for the requirement relating to the number of dealers in Sections 220.17(a)(1) and (b)(1)].

* * * * *

(e) Exceptions to Rule

The foregoing requirements of this [paragraph] *Rule*[5] are subject to the following exceptions:

* * * * *

(2) Exempted Securities, Marginable Corporate Debt Securities and Baskets

* * * * *

(C) Non-Convertible Corporate Debt Securities

On any positions in non-convertible corporate debt securities, which are listed or traded on a registered national securities exchange or quality as an ''OTC margin bond,'' as defined in Section 220.2(t) of Regulation T [of the Board of Governors of the Federal Reserve System], the margin to be maintained shall be 20 percent of the current market value or 7 percent of the principal amount, whichever amount is greater, except on mortgage related securities as defined in Section 3(a)(41) of the Act the margin to be maintained for an exempt account shall be 5 percent of the current market value. For purposes of this subparagraph, and exempt account shall be defined as a member, non-member broker/dealer, ''designated account'' or any person having net tangible assets of at least sixteen million dollars.

* * * * *

(3) Joint Accounts in Which the Carrying Member or a Partner or Stockholder Therein Has an Interest

In the case of a joint account carried by a member in which such member, or

[7] 17 CFR 200.30–3(a)(12)

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

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated June 1, 1999 (''Amendment No. 1''); Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated July 7, 1999 (''Amendment No. 2''); and Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Richard C. Strasser, Assistant Director, Division, Commission, dated July 15, 1999 (''Amendment No. 3''). Amendment No. 1 conforms several provisions of NASD Rule 2520 to New York Stock Exchange (''NYSE'') Rule 431. Among other things, Amendment No. 1 indicates that, for purposes of the joint back office provisions of NASD Rule 2520, the NASD will interpret the terms ''carrying and clearing member'' and ''carrying member'' in the same manner as NYSE. Amendment No. 1 also provides additional information regarding the proposed changes to the provisions of NASD Rule 2520 governing control and restricted securities. Amendment Nos. 2 and 3 make technical changes to the text of NASD Rule 2520.

[4] *See* Amendment No. 1, *supra* note 3.

[5] *See* Amendment No. 2, *supra* note 3.

any partner, or stockholder (other than a holder of freely transferable stock) of such member participates with others, each participant other than the carrying members shall maintain an equity with respect to such interest pursuant to the margin provisions of this paragraph as if such interest were in a separate account.

Pursuant to the Rule 9600 Series, the Association may grant an exemption from the provisions of paragraph (e)(3), if the account is[:]

[(A)] confined exclusively to transactions and positions in exempted securities[;].

[(B) maintained as a Market Functions Account conforming to the conditions of Section 220.12(e) (Odd-lot dealers) of Regulation T of the Board of Governors of the Federal Reserve System; or]

[C) maintained as a Market Functions Account conforming to the conditions of Section 220.12(c) (Underwritings and Distributions) of Regulation T of the Board of Governors of the Federal Reserve System and each other participant margins his share of such account on such basis as the Association may prescribe.] [6]

* * * * *

(5) Specialists' and Market Makers' Accounts

(A) A member many carry the account of an ''approved specialist or market maker,'' which account is limited to specialist or market making transactions, upon a margin basis which is satisfactory to both parties. The amount of any deficiency between the equity in the account and the [margin required by the other provisions of this paragraph and the] *haircut requirements pursuant to SEC Rule 15c3–1* shall be charged against the member's net capital when computing net capital under SEC Rule 15c3–1.

For the purpose of this subparagraph, the term ''approved specialist or market maker'' means either:

(i) a specialist or market maker, who is deemed a specialist for all purposes under the Act and who is registered pursuant to the rules of a national securities exchange; or

(ii) an OTC market maker or third market maker, who meets the requirements of Section 220.*7.(g)(5)*[12(d) of Regulation T [of the Board of Governors of the Federal Reserve System].

(B) In the case of joint account carried by a member in accordance with subparagraph (i) above in which the member participates, the equity maintained in the account by the other participants may be in any amount which is mutually satisfactory. The amount of any deficiency between the equity maintained in the account by the other participants and their proportionate share of the [margin required by the other provisions of this paragraph] *the haircut requirements pursuant to SEC Rule 15c3–1* shall be charged against the member's net capital when computing net capital under SEC Rule 15c3–1.

(6) Broker/Dealer Accounts

(*A*) A member may carry the proprietary account to another broker/dealer, which is registered with the Commission, upon a margin basis which is satisfactory to both parties, provided the requirements of Regulation T [of the Board Governors of the Federal Reserve System] are adhered to and the account is not carried in a deficit equity condition. The amount of any deficiency between the equity maintained in the account and the [margin required by the other provisions of this paragraph] *haircut requirements pursuant to SEC Rule 15c3–1* shall be charged against the member's net capital when computing net capital under SEC Rule 15c3–1.

(B) Joint Back Office Arrangements An arrangement may be established between two or more registered broker-dealers pursuant to Regulation T Section 220.7, to form a joint back office (''JBO'') arrangement for carrying and clearing or carrying accounts or participating broker-dealers. Members must provide written notification to the Association prior to establishing a JBO arrangement.

(i) A carrying and clearing, or carrying member must:

a. maintain a minimum tentative net capital of $25 million as computed pursuant to SEC Rule 15c3–1, except that a member whose primary business consists of the clearance of options market-maker accounts may carry JBO accounts provided that it maintains a minimum net capital of $7 million as computed pursuant to SEC Rule 15c3–1. In addition, the member must include in its ratio of gross options market maker haircuts required by the provisions of SEC Rule 15c3–1 gross deductions for JBO participant accounts. Clearance of option market maker accounts shall be deemed a broker-dealer's primary business if a minimum of 60% of the aggregate deductions in the above ratio are options market maker deductions. In the event that a carrying and clearing, or a carrying member's tentative net capital, or net capital, respectively, has fallen below the above requirements, the firm shall: (a) promptly notify the Association in writing of such deficiency, (b) take appropriate action to resolve such deficiency within three consecutive business days, or not permit any new transactions to be entered into pursuant to the JBO arrangement;

b. maintain a written risk analysis methodology for assessing the amount of credit extended to participating broker/dealers which shall be made available to the Association on request; and

c. deduct from net capital haircut requirements pursuant to SEC Rule 15c3–1 amounts in excess of the equity maintained in the accounts of participating broker/dealers.

(ii) A participating broker/dealer must:

a. be a registered broker/dealer subject to the SEC's net capital requirements;

b. maintain an ownership interest in the carrying/clearing member organization pursuant to Regulation T of the Federal Reserve Board, section 220.11; and

c. maintain a minimum liquidating equity of $1 million in the JBO arrangement exclusive of the ownership interest established in (ii)(b) above. When the minimum liquidating equity decreases below the $1 million requirement, the participant must deposit an amount sufficient to eliminate this deficiency within 5 business days or be subject to margin requirements pursuant to the other provisions of this Rule.[7]

(7) Nonpurpose Credit

In a nonsecurities credit account, a member may extend and maintain nonpurpose credit to or for any customer without collateral or on any collateral whatever, provided,

(A) the account is recorded separately and confined to the transactions and relations specifically authorized by Regulation T [of the Board of Governors of the Federal Reserve System];

* * * * *

The term ''nonpurpose credit'' means an extension of credit other than ''purpose credit'' as defined in Section 220.2[(u)] of Regulation T [of the Board of Governors of the Federal Reserve System].

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[6] *See* Amendment No. 1, *supra* note 3.

[1] NASD Regulation agreed to revise NASD Rule 2520(e)(6)(B) to: (1) Replace a period at the end of NASD Rule 2520(e)(6)(B)(i)(a) with a semi-colon; and (2) revise NASD Rule 2520(e)(6)(B)(ii)(c) to refer to the preceding paragraph as (ii)(b) rather than (2). Telephone conservation between Elliott R. Curzon, Assistant General Counsel, NASD Regulation, and Yvonne Fraticelli, Special Counsel, Division, Commission, on July 19, 1999.

(8) Shelf-Registered, Control and Restricted Securities

* * * * *

(B) Control and Restricted Securities—The equity in accounts of customers for control securities and other restricted securities of issuers who continue to maintain a consistent history of filing annual and periodic reports in timely fashion pursuant to the formal continuous disclosure system under the Act, which are subject to Rule 144 or 145(d) under the Securities Act of 1933, shall be 40 percent of the current market value of such securities ''long'' in the account, provided the member:

(i) in computing net capital, deducts any margin deficiencies in customers' accounts based upon a margin requirement as specified in subparagraph (c)(ii) below for such securities and values only that amount of such securities which are then salable under Rule 144 or 145(d) under the Securities Act of 1933 in conformity with all of the applicable terms and conditions thereof, for purposes of determining such deficiencies; and

* * * * *

(C) Additional Requirements on Shelf-Registered Securities and Control and Restrict Securities—A member extending credit on shelf-registered, control and other restricted securities in margin accounts of customers shall be subject to the following additional requirements:

(i) The Association may at any time require reports from members showing relevant information as to the amount of credit extended on shelf-registered, control and restricted securities and the amount, if any, deducted from net capital due to such security positions.

(ii) Concentration Reduction. A concentration exists whenever the aggregate position in control and restricted securities of any one issue, *excluding excess securities (as defined below),*[8] exceeds:

a. 10 percent of the outstanding shares or

b. 100 percent of the average weekly volume during the preceding three-month period. Where a concentration exists, for purposes of computing subparagraph (B)(i) above, the margin requirement on such securities shall be, based on the greater of (ii) a or b, above, as specified below:

Percent of outstanding shares	or, Percent of average weekly volume	Margin requirement
Up to 10 percent	Up to 100 percent	25 percent.
Over 10 percent and under 15 percent	Over 100 percent and under 200 percent	30 percent.
15 percent and under 20 percent	Over 200 percent and under 300 percent	45 percent.
20 percent and under 25 percent	300 percent and under 400 percent	60 percent.
25 percent and under 30 percent	400 percent and under 500 percent	75 percent.
30 percent and above	500 percent and above	100 percent.

For purposes of this sub-paragraph (e)(8)(C)(ii), ''excess securities'' shall mean the amount of securities, if any, by which the aggregate position in control and restricted securities of any one issue exceeds the aggregate amount of securities that would be required to support the aggregate credit extended on such control and restricted securities if the applicable margin requirement were 50%.

(D) Restricted Securities—Securities either:

(i) [held by non-affiliates of the issuer which are] then salable [by non-affiliate] pursuant to the terms and conditions of Rule 144(k) under the Securities Act of 1993, or

(ii) [which have been acquired by non-affiliates of the issuer in connection with Rule 145(a) transaction under the Securities Act of 1933 which are] then salable [by such non-affiliate] pursuant to the terms and conditions of Rule 145 (d)(2) or (d)(3) under such Act,

shall not be subject to the provisions of this subparagraph [H] *(e)(8),* provided that the issuer continues to maintain a consistent history of filing annual and periodic reports in timely fashion pursuant to the formal continuous disclosure system under the Act.[9]

(f) Other Provisions

* * * * *

(2) Puts, Calls and Other Options

* * * * *

(H)

* * * * *

(iv)

* * * * *

In the case of a put on an option contract (including a put on a broad index stock group), the letter of guarantee must certify that the guarantor holds for the account of the customer as security for the letter, cash or cash equivalents which have an aggregate market value, computed as at the close of business on the day the put is written, of not less than 100 percent of the aggregate exercise price of the put and that the guarantor will promptly pay the member the exercise settlement amount (in the case of a put on a broad index stock group) or the aggregate exercise price (in the case of any other put on an option contract) in the event the account is assigned an exercise notice. Cash equivalents shall mean those instruments referred to in Section 220.2 of Regulation T [of the Board of Governors of the Federal Reserve System.]

* * * * *

(L) Exclusive designation—A customer may designate at the time an option order is entered which security position held in the account is to serve in lieu of the required margin, if such service is offered by the member; or the customer may have a standing agreement with the member as to the method to be used for determining on any given day which security position will be used in lieu of the margin to support an option transaction. Any security held in the account which serves in lieu of the required margin for a short put or short call shall be unavailable to support any other option transaction in the account.

(M) Cash account transactions—A member may make option transactions in a customer's cash account, providing:

(i) The transaction is permissible under Regulation T, Section 220.8; or

(ii) The transaction is a debit put spread in listed broad-based index options with European-style exercise comprised of a long put(s) coupled with a short put(s) overlying the same broad-based index with an equivalent underlying aggregate index value and the short put(s) and long put(s) expire simultaneously, and the strike price of

[8] *See* Amendment No. 1, *supra* note 3.

[9] *See* Amendment No. 1, *supra* note 3.

the long put(s) exceed the strike price of the short put(s).

* * * * *

(3) ''When Issued'' and ''When Distributed'' Securities

(A) Margin Accounts

* * * * *

When an account has a ''short'' position in a ''when issued'' security and there are held in the account securities upon which the ''when issued'' security may be issued, such ''short'' position shall be marked to the market and the balance in the account shall for the purpose of this [paragraph (c)] *Rule* [10] be adjusted for any unrealized loss in such ''short'' position.

(B) Cash Accounts

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The provisions of this subparagraph [(B)]*(f)(3)* shall not apply to any position resulting from contracts on a ''when issued'' basis in a security:

* * * * *

(6) Time Within Which Margin or ''Mark to Market'' Must Be Obtained

The amount of margin or ''mark to market'' required by any provision of [this paragraph (c)] *this Rule* shall be obtained as promptly as possible and in any event within fifteen business days from the date such deficiency occurred, unless the Association has specifically granted the member additional time.

(7) Practice of Meeting Regulation T Margin Calls by Liquidation Prohibited

When a ''margin call,'' as defined in Section 220.2[(1)] of Regulation T [of the Board of Governors of the Federal Reserve System], is required in a customer's account, no member shall permit a customer to make a practice of either deferring the deposit of cash or securities beyond the time when such transactions would ordinarily be settled or cleared, or meeting the margin required by the liquidation of the same or other commitments in the account.

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(8) Special Initial and Maintenance Margin Requirements

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(B) Day-Trading

The term ''day-trading'' means the purchasing and selling of the same security on the same day. A ''day-trader'' is any customer whose trading shows a pattern of day-trading. Whenever day-trading occurs in a customer's margin account the margin to be maintained shall be the margin on the ''long'' or ''short'' transaction, whichever occurred first, as required pursuant to the other provisions of this Rule. When day-trading occurs in the account of a ''day-trader'' the margin to be maintained shall be the margin on the ''long'' or ''short'' transaction, whichever occurred first, as required by Regulation T [of the Board of Governors of the Federal Reserve System] or as required pursuant to the other provisions of this Rule, whichever amount is greater.

* * * * *

(9) Free-Riding in Cash Accounts Prohibited

No member shall permit a customer (other than a broker/dealer or a ''designated account'') to make a practice, directly or indirectly, of effecting transactions in a cash account where the cost of securities purchased is met by the sale of the same securities. No member shall permit a customer to make a practice of selling securities with them in a cash account which are to be received against payment from another broker/dealer where such securities were purchased and are not yet paid for. A member transferring an account which is subject to a Regulation T 90-day freeze to another member firm shall inform the receiving member of such 90-day freeze. The provisions of Section 220.8(c) of Regulation T [of the Board of Governors of the Federal Reserve System] dictate the prohibitions and exceptions against customers' free-riding. Members may apply to the Association in writing for waiver of a 90-day freeze not exempted by Regulation T.

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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 Association 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 Association 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

NASD Regulation is proposing to adopt amendments to the provisions of NASD Rule 2520 relating to exempted borrowers, good faith accounts, joint back office (''JBO'') arrangements and options transactions to conform NASD Rule 2520 to recent changes to NYSE Rule 431 and recently adopted changes to Regulation T promulgated by the Board of Governors of the Federal Reserve System (''Federal Reserve Board''). NASD Regulation is also proposing other minor changes to eliminate obsolete provisions and correct errors in the text of NASD Rule 2520.

Margin Requirements for Exempted Borrowers and Good Faith Accounts. Under the recent changes to Regulation T, the Federal Reserve Board has created a new category of account called the ''good faith account'' to replace the ''non-purpose,'' ''arbitrage,'' and ''government securities'' accounts. In the good faith account, a customer can purchase certain securities (exempted and non-equity securities, and money market and exempted securities mutual funds) on ''good faith'' margin (the amount of margin specified by the creditor in the exercise of sound credit judgment) or the margin specified by the regulatory authority, whichever is greater. Regulation T no longer specifies initial margin, payment and liquidation time frames for transactions in these securities in a good faith account. NASD Regulation believes that these changes to Regulation T represent a continuing philosophical shift away from government mandated credit regulation and toward greater reliance on industry self-regulation and risk assessment.

NASD Regulation believes that transactions in good faith accounts raise the same safety and soundness questions as transactions in cash and margin accounts. Accordingly, the proposed amendments require all accounts (except for cash accounts) to maintain margin as required by NASD Rule 2520. Cash accounts will continue to be subject only to certain specific requirements, not to the overall requirements of the rule.

In addition, NASD Regulation states that the Federal Reserve Board exempted a class of borrowers called ''exempted borrowers'' (broker-dealers that do substantial public business) from the requirements of Regulation T. The proposed amendments to NASD Rule 2520 will recognize the exemption

[10] *See* Amendment No. 3, *supra* note 3.

adopted by the Federal Reserve Board by codifying the exemption in the definition of ''customer'' in paragraph 2520(a)(3). However, the proposed amendments will require that the proprietary accounts of an introducing member that are carried or cleared by another member remain subject to the equity requirements of 2520(e)(6), which prohibit a member from carrying a proprietary account in a deficit equity condition and require the difference between the account equity and the margin required by NASD Rule 2520 to be deducted from the member's net capital.[11]

Amendments to Provide for Joint Back Office Arrangements.[12] NASD Regulation is also proposing amendments to provide for JBO arrangements established pursuant to Section 220.7 of Regulation T. A JBO arrangement is one in which the creditor is a carrying and clearing broker-dealer or a carrying broker-dealer[13] owned jointly or individually by other creditors. The amendments would require members, prior to establishing a JBO arrangement, to notify the Association. In addition, a carrying and clearing broker-dealer or a carrying broker-dealer in a JBO arrangement must maintain minimum net capital of $25 million. If a carrying and clearing broker-dealer or a clearing broker-dealer only clears options market-maker accounts, it must maintain minimum net capital of $7 million.

A carrying and clearing broker-dealer or a carrying broker-dealer in a JBO arrangement must include in its ratio of gross options market maker haircuts for net capital purposes the gross deductions of JBO participant accounts. In the event that a carrying and clearing broker-dealer or a carrying broker-dealer's tentative net capital or net capital falls below the requirements, the broker-dealer must notify the Association of the deficiency and resolve the deficiency within three business days. If the deficiency is not resolved, the broker-dealer may not permit any new transactions under the JBO arrangement. In addition, a carrying and clearing broker-dealer or a carrying broker-dealer in a JBO arrangement must maintain a written risk analysis methodology for assessing credit extensions and deduct the excess equity of participating broker-dealers from its net capital haircuts.

A participating broker-dealer must be registered as a broker-dealer, maintain an ownership interest in the carrying and clearing broker-dealer or the carrying broker-dealer, and have a liquidating equity of $1 million in the JBO arrangement, exclusive of its ownership interest in the carrying and clearing broker-dealer or the carrying broker-dealer.

Control and Restricted Securities. Currently, the ''Concentration Reduction'' provision in NASD Rule 2520(e)(8)(C)(ii) is designed to impose increasing margin requirements for customer positions in control and restricted securities based upon the percent of outstanding shares or the percent of average weekly volume that the position represents. The effect of the provision, however, is to impose a margin requirement on the entire position, rather than on part of the position that actually collateralizes the loan extended to the customer. Thus, the customer is penalized for maintaining a position that exceeds the collateral necessary to cover his margin loan. To eliminate this unintended penalty, the proposed rule change adds language excluding ''excess securities'' from the concentration reduction calculation. The proposal defines ''excess securities'' as the amount of securities by which the aggregate position in control and restricted securities of any one issue would be required to support the aggregate credit extended on such control and restricted securities if the applicable margin requirement was 50% percent. Thus, under the proposed rule change, the concentration reduction calculation will be performed on an aggregate position that is only as large as the collateral necessary to support a margin loan of 50% percent.

In addition, the proposed rule change expands the exception in paragraph (e)(8) to include all restricted securities that can be sold pursuant to SEC Rules 144(k), 145(d)(2), or 145(d)(3). Currently, only those restricted securities that can be sold by non-affiliates of the issuer pursuant to SEC Rules 144(k), 145(d)(2), or 145(d)(3) are excepted from paragraph (e)(8). Thus, in the event of a customer default, members will be permitted to sell certain restricted securities pursuant to SEC Rule 144(k) without being subject to the requirements of NASD Rule 2520. Accordingly, those customer-owned, restricted securities that can be sold under SEC Rule 144(k) would be subject to the same maintenance margin requirements that presently apply to ordinary stock (25%).

Amendments to Margin Rules governing Options Transactions. NASD Regulation is proposing to amend paragraph (f)(2) to add subparagraphs (L) and (M), which are identical to current provisions in NYSE Rule 431, to permit customers to designate securities positions to margin options trades, and to permit options transactions in customer cash accounts to the extent the transaction is permissible under Regulation T, or that has certain other specific characteristics.

Amendments to Conform to Changes to Regulation T. NASD Regulation is also proposing to amend NASD Rule 2520 to conform references to Regulation T to the amendment to

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[11] According to NASD Regulation, under the National Securities Markets Improvement Act of 1996 (''NSMIA''), the Federal Reserve Board no longer has the authority to regulate credit for the market making transactions of a registered market maker (transactional exemption); however, broker-dealers that are not market makers and that do not qualify as exempted borrowers because they do not meet the Regulation T definition are treated like ordinary customers for purposes of Regulation T initial margin. Currently, NASD Rule 2520 permits good faith maintenance margin for broker-dealer's market making and proprietary accounts. *See* Rule 2520(e)(5) and (e)(6). This good faith maintenance margin standard will not be changed under the proposed amendments.

[12] The Chicago Board Options Exchange, the Chicago Stock Exchange, the NYSE, the Philadelphia Stock Exchange, and the Pacific Exchange have filed similar proposed rule changes with the Commission relating to JBOs. Notices of the exchanges' JBO proposals have been published for comment. *See* Securities Exchange Act Release Nos. 39418 (December 10, 1997), 62 FR 66154 (December 17, 1997) (File No. SR–CBOE–97–58); 40384 (August 31, 1998), 63 FR 48286 (September 9, 1998) (File No. SR–CHX–98–12); 39497 (December 29, 1997), 63 FR 899 (January 7, 1998) (File No. SR–NYSE–97–28); 39680 (February 18, 1998), 63 FR 9622 (February 25, 1998) (File No. SR–PCX–97–49); and 39419 (December 10, 1997), 62 FR 66169 (December 17, 1997) (File No. SR–PHLX–97–56).

[13] Like the NASD's current proposal, the NYSE's JBO proposal permits ''carrying and clearing'' broker-dealers and ''carrying'' broker-dealers to establish JBOs. The NYSE sought and obtained interpretative guidance from the Federal Reserve Board of Governors indicating that a broker-dealer that would carry the accounts of JBO participants on its books but would not itself clear the JBO participants' accounts would be a ''clearing and servicing broker'' for purposes of Section 220.7(c) of Regulation T and, accordingly, would be permitted to establish a JBO. *See* Letter from Scott Holz, Counsel, Federal Reserve Board of Governors, to Raymond J. Hennessy, Vice President, Member Firm Regulation, NYSE, dated April 16, 1999 (''April 16 Letter''). NASD Regulation understands that the NYSE uses the terms ''clearing member'' and ''carrying member'' to refer to two distinct forms of activity engaged in by certain firms. In addition, NASD Regulation agrees with the interpretation set forth in the April 16 Letter and intends for the terms ''carrying and clearing member'' and ''clearing member'' to have the same meaning in NASD Rule 2520 as they have in NYSE Rule 431. NASD Regulation states that it intends for NASD Rule 2520 to be substantially identical to NYSE Rule 431 to minimize confusion regarding margin requirements for NASD members who are also NYSE members. Accordingly, NASD Regulation intends that, unless otherwise specifically noted or where the language of NASD Rule 2520 differs substantively from NYSE Rule 431, the two rules are to be read and interpreted in the same manner. *See* Amendment No. 1, *supra* note 3.

Regulation T recently adopted by the Federal Reserve Board.

Miscellaneous Amendments. NASD Regulation is proposing to eliminate paragraph (c)(5) prescribing maintenance margin for American Stock Exchange Emerging Company Marketplace securities because the Emerging Company Marketplace no longer exists. NASD Regulation is also proposing to eliminate paragraphs (e)(3)(B) and (C) because Section 220.12 of Regulation T was deleted under the recent amendments to Regulation T.[14]

2. Statutory Basis

The Association believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the rules of an Association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest.

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

The Association 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.

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. 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 it reasons for so finding or (ii) as to which the NASD 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, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. 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. Copies of such filing will also be available for inspection and copying a the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–05 and should be submitted by September 1, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20636 Filed 8–10–99; 8:45 am]

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[14] Telephone conversation between Elliott R. Curzon, Assistant General Counsel, NASD Regulation, and Anitra Casssas, Division, Commission, on July 8, 1999.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41703; File No. SR–NYSE–99–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amended Rules 13 and 72

August 4, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 10, 1999, 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 NYSE. 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 rule change consists of amendments to NYSE Rules 13 and 72 to define XPress orders and describe how such orders are to be executed. Below is the text of the proposed rule change. Proposed new language is in *italics.*

* * * * *

Rule 13 Definitions of Orders

XPress order

An order to buy or sell a security for no less than such number of shares as the Exchange shall from time to time determine and no more than the displayed size of an XPress quote, as defined below, which order is to be executed in whole or in part at the price of the XPress quote, if available, or at a better price if obtainable. The portion not so executed shall be treated as cancelled.

An XPress quote is a quote so indicated by the Exchange. In order to be indicated as an XPress quote, a published bid or offer must be at the same price, for no less than the number of shares and the minimum period of time that the Exchange shall from time to time determine. If the XPress bid or offer price changes or the published bid or offer size is less than such number of shares, the bid or offer shall no longer be indicated as an XPress quote. (See also Rule 72.50.)

The Exchange shall make known to its membership to minimum size for XPress orders and the minimum size and time requirements for XPress quotes.

Rule 72 Priority and Precedence of Bids and Offers

* * * * *

(f) *Except as provided in .50 below,* a sale shall remove all bids from the Floor except that if the number of shares of stock or principal amount of bonds offered exceeds the number of shares or principal amount specified in the bid having priority or precedence, a sale of the unfilled balance to other bidders shall be governed by the provisions of these Rules as though no sales had been made to the bidders having priority or precedence.

* * * * *

.50 XPress Orders.—An execution of an XPress order, in whole or in part, shall not remove bids or offers from the Floor. Once an XPress order has been represented in the Crowd, no part of the XPress bid or offer against which the XPress order is to be executed shall be withdrawn, except to provide price improvement to all or part of the XPress order. When an XPress order has been executed in part at an improved price, the remainder of such order shall be executed at the XPress bid or offer up to the number of shares then available, regardless of whether such number is less than the minimum size for an XPress quote. All XPress orders shall be executed in strict time priority with respect to each other. A member who is providing a better price to an XPress order must trade with all other market interest having priority at that price before trading with the XPress order.

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

[2] 17 CFR 240.19b–4.