

pilot, specialists are evaluated based on objective measures, such as turnaround time, price improvements, depth and added depth. Generally, any specialist who receives a deficient score in one or more objective measures may be required to attend a meeting with the Performance Improvement Action Committee or the Market Performance Committee.¹¹

The current pilot program will expire on June 30, 1999. The Exchange seeks to extend its SPEP pilot until March 31, 2000, while the Exchange considers revising its depth measure calculations.¹²

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,¹³ in that it is designed 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 a national market system; and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

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

The exchange 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 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 in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-BSE-99-09 and should be submitted by July 23, 1999.

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

The Commission finds that the BSE's proposal to extend the SPEP pilot program until March 31, 2000, is consistent with the requirements of the Act and the rules and regulation thereunder. Specifically, the Commission finds that the amendment is consistent with Section 6(b)(5) of the Act,¹⁴ which requires that the rules of the 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, and, in general to protect investors and the public interest. The Commission believes that the proposed nine-month extension of the pilot program should allow the Exchange to continue to assess specialist performance while allowing the Exchange adequate time to consider amending its two depth measure calculations.

The Commission finds good cause for granting the Exchanges' request for a nine-month extension of the SPEP pilot prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Among the obligations imposed upon specialists by the Exchange, and by the Act and the rules promulgated thereunder, is the maintenance of fair and orderly markets in their securities. To ensure that specialists fulfill these obligations, it is important that the Exchange be able to evaluate specialist performance. The BSE's SPEP pilot assists the Exchange in conducting its evaluation. Therefore, the Commission believes good cause exists to approve the extension of the pilot program until March 31, 2000, on an accelerated basis. Accordingly, the Commission believes that granting accelerated approval of the requested

extension is appropriate and consistent with Sections 6(b)(5) and 19(b)(2) of the Act.¹⁵

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change (SR-BSE-99-09) is hereby approved on an accelerated basis until March 31, 2000.¹⁷

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-16868 Filed 7-1-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41560; File No. SR-NASD-98-96]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to Forms U-4 and U-5

June 25, 1999.

I. Introduction

On December 18, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary NASD Regulation, Inc. ("NASD Regulation" or "NASDR"), 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 In its proposal, NASD Regulation seeks to amend disclosure question on Form U-4, The Uniform Application for Securities Industry Registration or Transfer, and Form U-5, The Uniform Termination Notice for Securities Industry Registration, (collectively "Proposed Forms") and to implement the World Wide Web-based Central Registration Depository ("Web CRD"). Notice of the proposal, as amended by Amendment No. 1, Amendment No. 2, and Amendment No. 3, was published in the **Federal Register** on April 30, 1999 ("Notice").³

¹⁵ 15 U.S.C. 78f(b)(5) and 78s(b)(2).

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 41326 (April 22, 1999), 64 FR 23366 (File No. SR-NASD-98-96).

¹¹ *Id.*

¹² The Exchange plans on seeking permanent approval of the SPEP pilot at the same time that it submits its revised depth measure calculations. *Id.*

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78f(b)(5).

On April 28, 1999, NASDR filed Amendment No. 4 to the proposed rule change ("Amendment No. 4"). Notice of Amendment No. 4 was published in the **Federal Register** on May 13, 1999.⁴ Amendment No. 4 clarifies the processing of Forms U-4 and U-5 during and after the period Web CRD becomes effective. On June 8, 1999, NASDR submitted Amendment No. 5 to the proposal. Amendment No. 5 makes technical, non-substantive, changes to the proposal.⁵ On June 18, 1999, NASDR filed Amendment No. 6 to the proposal. Amendment No. 6 also makes technical, non-substantive, changes to the proposal.⁶ The Commission received no comment letters on the filing. This order approves the proposal, as amended.

II. Description of the Proposal

As part of NASDR's efforts to modernize the Central Registration Depository ("CRD"), NASDR seeks to streamline the registration and termination process for individuals. NASDR proposes to amend Forms U-4 and U-5 so that these forms can be electronically submitted through the World Wide Web. Under the NASDR's proposal, an individual seeking registration will be required to fill out and submit an electronic Form U-4, which will be available on NASDR's website ("Proposed Form U-4").⁷ Further, when an associated person terminates his association with a broker-dealer, the broker-dealer will be required to fill out and submit an electronic Form U-5, which will also be available on the NASDR's website ("Proposed Form U-5").⁸ In addition, the NASD seeks to amend certain disclosure questions on Forms U-4 and U-5.

⁴ See Securities Exchange Act Release No. 41371 (May 5, 1999), 64 FR 25945 (File No. SR-NASD-98-96).

⁵ See letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated June 7, 1999. In Amendment No. 5, NASD Regulation changed the abbreviations of the American Stock Exchange from "ASE" to "AMEX" and the Pacific Stock Exchange from "PSE" to "PCX" on the Proposed Forms U-4 and U-5. Because this is a technical change, it does not need to be published for comment.

⁶ See letter from John M. Ramsay, Vice President and Deputy General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated June 18, 1999. In Amendment No. 6, NASDR further clarifies the processing of Forms U-4 and U-5 during the period Web CRD becomes effective. Because this is a technical change, it does not need to be published for comment.

⁷ The address for NASDR's website is <http://www.nasdr.com>.

⁸ *Id.*

Background

The NASD originally planned to implement a redesigned CRD in 1996. At that time, the NASD proposed a network-based system in which individuals and firms would electronically submit Forms U-4 and U-5 directly to the CRD. To accomplish this change, the NASD redesigned Forms U-4 and U-5. The Commission approved these forms in 1996 ("1996 Forms").⁹

However, following a technological reassessment in 1997, the NASD decided to abandon the network-based system. Instead, the NASD decided to create a web-based system where individuals and firms could electronically submit Forms U-4 and U-5 through the NASDR's World Wide Website. Because the network-based system was abandoned, the 1996 Forms could not be used. As a result, the NASD received Commission approval for Interim Forms U-4 and U-5 while Web CRD was being developed ("Interim Forms").¹⁰ The Interim Forms, which are submitted on paper, included all of the substantive changes to the disclosure questions and some of the changes to instructions that were approved in the 1996 Forms. The Interim Forms are currently in effect.

Changes to the 1996 Forms

To accomplish the transition to Web CRD, the NASD now proposes certain formatting and technical changes to the 1996 Forms, which were the original proposed electronic forms. First, the Disclosure Reporting Pages ("DRPs") were reformatted. Due to the complexity of the data structure of the 1996 DRPs, NASDR felt that Web CRD would not be able to efficiently process the 1996 Forms without revisions.¹¹

Second, the "other business activities" DRP on the 1996 Form U-4 was replaced with a separate attachment sheet, which also can be used to provide additional information about residential, employment or personal history. The other business activity section of Question 20B on the 1996 Form U-4 renumbered as Question 21. (All subsequent questions are likewise renumbered.) Correspondingly, the instructions to Question 21 on the Proposed Form U-4 list the types of

⁹ See Securities Exchange Act Release No. 37407 (July 5, 1996), 61 FR 36595 (July 11, 1996) (File No. SR-NASD-96-19).

¹⁰ See Securities Exchange Act Release No. 39322 (Nov. 13, 1997), 62 FR 62391 (Nov. 21, 1997) (File No. SR-NASD-97-98).

¹¹ For a detailed history of the development of Web CRD, Forms U-4 and U-5, and the procedures associated with filing the forms, refer to the Notice and Amendment No. 4. See *supra* Notes 3, 4.

information that must be provided on the attachment sheet, and request the information that would be reportable on the "other business activities" DRP.

Third, Sections 11 and 12 on the 1996 Form U-4 and Section 11 on the 1996 Form U-5 have been reformatted to ensure more accurate selections of registration categories. The Proposed Forms were reformatted to reduce erroneous requests for registrations that are not available for a particular self-regulatory organization ("SRO"). In addition, the instructions on the Proposed Forms clarify that CRD does not process Investment Adviser Representative and Agent of the Issuer registrations, even though the paper versions of the Proposed Forms contain boxes for such registrations. When an individual views the electronic version of the Proposed Forms on the Web CRD system, the boxes for these registrations will be shaded and the individual will not be allowed to select these options. The boxes for these registrations are included on the paper versions of the Proposed Forms solely for the convenience of states that wish to use the paper Proposed Forms for these registrations.

Fourth, the General Instructions on the Proposed Forms were changed. The General Instructions regarding the submission of documents on the 1996 Forms provide that documents are not required to be submitted, but that the individual may submit them because documents may be requested as part of the review process. The Proposed Forms amend this instruction slightly to conform to the current practice of the states and SROs by stating that, although documents are not generally required to be filed with the Forms, it may be necessary to provide them to clarify or support responses on the Forms.

Finally, the proposed Forms retain the definitions of "investigation" and "sales practice violations" that were adopted in the Interim Forms, with slight changes to function. The NASD believes these definitions are more precise than the corresponding definitions used in the 1996 Forms and generally have worked well in practice.

The Proposed Forms also contain DRP "pick lists" that will appear for users filing the forms electronically. The pick lists, which only appear in the DRP portions of the Proposed Forms, provide choices that an individual or firm must select when answering a question. For example, on the Proposed U-5 Customer Complaint DRP, when a firm clicks on the field for "Litigation Disposition," the following choices will appear on the screen: Decision for

Applicant, Decision for Customer, Denied, Dismissed, Judgment (other than monetary), Monetary Judgment to Applicant, Monetary Judgment to Customer, No Action, Other, Settled, Withdrawn. Like every pick list on the Proposed Forms, the firm submitting the electronic DRP will be limited to one of the choices on the list. In all pick lists (except states of residence and types of judgments/liens), a firm or individual may select "Other" if none of the choices presented in the pick list is applicable.

Changes to the Disclosure Questions

In addition, four disclosure questions from the 1996 Forms are amended on the Proposed Forms. These substantive amendments involve: (1) An expansion of the Form U-4 question eliciting information on settled customer complaints to include those oral complaints involving sales practice allegations that are settled for \$10,000 or more;¹² (2) a modification of the Form U-5 question eliciting information on customer complaints to make that reporting requirement consistent with the parallel question on the Form U-4 (effectively eliminating the reporting requirement for and permitting the archiving of customer complaints that are over 24 months old and are not otherwise reportable);¹³ and (3) an expansion of the reporting requirement on the Form U-5 to include criminal or regulatory actions initiated on the basis of events that occurred while and individual was employed by the firm, even if the actions were initiated after the individual had been terminated.¹⁴

Transition Period and Afterward

From July 31 to August 15, 1999, the CRD system will not process Forms U-4 and U-5. This two week period (termed the "System Transition Period") is needed to complete the final data conversions from the current CRD system to the Web CRD system.¹⁵ NASDR requests that August 1, 1999 be the effective date for the Proposed Forms.

Based on this effective date, NASDR *WILL NOT* accept *paper* Interim Forms U-4 and U-5 after July 29, 1999. However, firms that use the Firm Access Query System and firms that use the

Electronic Filing Transfer system will be able to electronically submit pages one and two a forms U-4 and U-5 to NASDR through July 30, 1999.¹⁶ In addition, NASDR *WILL NOT* accept Proposed Form U-4 until August 16, 1999, which is when the CRD system will again be operational. In practice, this means that NASDR *WILL NOT* accept new applications for registration from July 30 to August 16, 1999.

However, during the System Transition Period, NASDR *WILL* accept paper versions of the Proposed Form U-5 provided these forms are submitted to report full termination (*i.e.*, a termination of an individual's registration with all SROs and jurisdictions). Additionally, during this period, NASDR will review all paper Proposed Forms U-5 reporting full termination and will provide notice to the appropriate regulators/jurisdictions if these forms contain disclosure information.

In addition, NASDR has developed a plan, which is based on the current Temporary Agent Transfer ("TAT") program, to allow registered representatives to transfer their registrations during the System Transition Period. During this period, NASDR will accept Transition TAT Requests for registered representatives who have left their previous employer within the last seven days and who have no reportable disclosure information. NASDR will only accept Transition TAT Requests for participating jurisdictions.¹⁷

After August 1, 1999 and continuing after the System Transition Period, NASDR also *WILL* accept paper versions of Part II of the "Internal Review DRP" in the Proposed Form U-5. The 1996 Form U-5 "Internal Review DRP" contains a Part II that allows a registered representative who has been terminated to provide a summary of the circumstances relating to an internal review disclosure submitted by the individual's former employer on the Form U-5. Once the Proposed Forms become effective, NASDR *WILL* accept paper submissions of this Part II information by a terminated registered representative and NASDR staff will enter the information on to the Web CRD system on behalf of the terminated registered representative.

After the System Transition Period (*i.e.*, August 16, 1999), when a firm amends a Form U-4 filing on Web CRD for the first time for an individual with

disclosure information, a blank Page 3 of the Proposed Form U-4 will appear on the screen. A firm then will be required to fill out the entire Page 3 to reflect all currently reportable disclosure information, some or all of which may already have been reported to CRD.¹⁸ Thereafter, a member will be able to retrieve the most recently filed electronic Page 3 of the Form U-4 and edit for submission, rather than filling out the blank Page 3 for each subsequent filing.

Beginning August 16, 1999, All Forms U-4 and U-5 Must Be Submitted Electronically

II. Discussion

The Commission finds that the proposal is consistent with the requirements of Section 15A¹⁹ of the Act²⁰ and the rules and regulations thereunder that govern the NASD.²¹ In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6)²² which requires, among other things, that the rules of an association be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

The Commission has determined to approve the Association's proposal implementing Web CRD and amending certain disclosure questions on Forms U-4 and U-5. The Commission believes that Web CRD will streamline the registration and termination process for individuals and firms. Under the NASDR's proposal, an individual

¹⁸ In Amendment No. 4, the NASDR stated that firms were already subject to this requirement. The Commission notes that under the Interim Form U-4, forms did *not* need to file a new Page 3 every time a firm amended an individual's U-4. While the Interim U-4 was effective, the instructions stated, "Information contained on Form U-4 must be kept current. As changes occur, the CRD should be updated by an amendment filing. Amendments are accomplished by filing the appropriate page(s) containing only the information in need of revision." See instructions under the section titled, "How to Use Form U-4."

¹⁹ 15 U.S.C. 78o-3.

²⁰ Pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. The Commission notes that the forms provide SROs and states with a centralized, cost-effective, and efficient means of maintaining information on associated persons. Moreover, the impact on competition is negligible because all SROs currently use a version of Forms U-4 and U-5. 15 U.S.C. 78c(f).

²¹ 15 U.S.C. 78s(b).

²² 15 U.S.C. 78o-3(b)(6).

¹² Question 22i(2) on the Proposed U-4.

¹³ Question 17 on the Proposed U-5.

¹⁴ Questions 14 and 15 on the Proposed U-5.

¹⁵ NASDR's Public Disclosure Program, which provides disciplinary and other information about NASD members and their associated persons, will continue to be available to the public and regulators during the System Transition Period. Regulators also will continue to have query access (*i.e.*, read only access) to the current CRD system during the System Transition Period.

¹⁶ See *supra* Note 6.

¹⁷ See *CRD/PD Bulletin*, June 1999, Volume 7, No. 2. This Bulletin contains detailed information about the transition to Web CRD.

seeking registration will be required to fill out an electronic Form U-4, which will be available on NASDR's website, and submit it electronically. Further, when an associated person ends his association with a broker-dealer, the broker-dealer will be required to fill out an electronic Form U-5, which will also be available on the NASDR's website, and submit it electronically.

Further, the Commission believes that Web CRD will expedite the registration and termination process for individuals and firms. Under the proposal, firms and individuals will no longer rely on the mail system to transmit the forms to NASDR. Now, individuals and firms will electronically submit Forms U-4 and U-5 through the World Wide Web, which means NASDR should receive the forms more quickly. The Commission also believes that investors will benefit from the expedited registration and termination process because the faster NASDR receives the forms, the faster information on the forms can be disclosed to investors through the NASD's Public Disclosure Program ("PDP").

In addition, based on demonstrations of Web CRD, the Commission believes that the CRD system will be easier for regulators and SROs to use. For example, Form U-4 disclosure information will be in a format that is easier to understand than what is currently displayed in CRD. With Web CRD, regulators and SROs will be able to quickly access relevant information in an easy-to-read format.

Additionally, the Commission believes that the amended disclosure questions, coupled with the NASD's PDP, will provide the public with more information about an associated person's disciplinary history. The Commission believes that this information will help investors determine whether to conduct or continue to conduct business with particular associated persons. The Commission notes that disclosure of this additional information may serve as a deterrent to fraudulent activity as well.

Lastly, the Commission notes that the pick lists, even with the "Other" choice, will standardize individuals' and firms' responses to DRP questions. Previously, when an individual or firm responded to DRP questions on the Interim Forms U-4 and U-5, the individual or firm had the ability to write whatever he thought was appropriate. Now, when responding to a DRP question, an individual or firm is limited to the choices provided in the pick lists. Because future changes to the lists might affect individuals and firms' ability to respond to DRP questions, the

Commission expects NASDR to file substantive changes to the pick lists.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²³ that the proposed rule change (SR-NASD-98-96), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-16865 Filed 7-1-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41561; File No. SR-OCC-99-02]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Use of Non-Equity Securities Options for Determining Margin and Clearing Fund Requirements

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 2, 1999, The Options Clearing Corporation ("OCC") 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 primarily by OCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposal.

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 provide OCC with the flexibility to designate certain classes of stock fund options as non-equity securities options for purposes of determining margin and clearing fund requirements.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, OCC included statements concerning

²³ 15 U.S.C. 78s(b)(2).

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The complete text of the proposed rule change is included in OCC's filing, which is available for inspection and copying at the Commission's public reference room and through OCC.

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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.³

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change will permit OCC to designate certain options on stock funds as non-equity options for purposes of margin and clearing fund calculations.⁴ The American Stock Exchange lists and trades stock fund options on certain Standard & Poor's Depository Receipts ("SPDRs") and plans to trade options on World Equity Benchmark Shares ("WEBs") in the near future. OCC proposes to continue to treat stock fund options like stock options for the clearance and settlement purposes because stock fund options are settled through delivery of the underlying fund shares.

However, OCC believes that for margin and clearing fund purposes it would be more logical to treat some stock fund options like non-equity options because the value of the fund shares more closely correlates to the value of an underlying index. The proposed rule change will allow OCC to add such stock fund options to the permissible instruments used to offset index related positions. OCC believes that such flexibility will potentially allow OCC to prudently reduce the amount of margin and clearing fund collateral required to be deposited by clearing members.

Under the proposed rule change, OCC will have the discretion to designate classes of stock fund options as non-equity options for margin purposes in order to efficiently process these securities while effectively managing their risk. When classes of stock fund options are designated as non-equity securities options contracts, they will be subject to the margin requirements of

³ The Commission has modified the text of the summaries prepared by OCC.

⁴ OCC previously amended its rules to accommodate options on instruments such as SPDRs and WEBs and to process, settle and margin them like options on equity securities. Securities Exchange Act Release No. 40132 (June 25, 1998), 63 FR 36467 [File No. SR-OCC-97-02]. In another filing, OCC introduced the term "stock fund shares" and replaced the term "common stocks" with the phrase "equity securities." Securities Exchange Act Release No. 40595 (October 23, 1998), 63 FR 58438 [File No. SR-OCC-98-08].