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

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive 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. Copies of such filings will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR–CSE–99–04 and should be submitted by June 3, 1999.

IV. Discussion

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 and, in particular, the requirements of Section 6 of the Act[8] and the rules and regulations thereunder.[9] Section 6(b)(5) of the Act[10] states that the rules of an exchange must be designed to a facilitate securities transactions and to remove implements to and perfect the mechanism of a free and open market. The Commission believes that the proposed rule change will augment the Exchange's ability to police its market and will increase the Exchange's flexibility in responding to minor violations of limit order display obligations.

Pursuant to Section 19(b)(2) of the Act,[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 of the proposal in the **Federal Register** in that the proposed rule change will further the Exchange's ability to provide effective oversight of SEC and Exchange rules in an expeditious manner. The Commission also believes the proposed rule change will provide the Exchange greater flexibility in punishing violations of these rules.

It is therefore ordered, pursuant to Section 19(b)(2)[12] of the Act, that the proposed rule change (file No. SR–CSE–99–04) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–12065 Filed 5–12–99; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78f.

[9] In approving this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. 15 U.S.C. 78c(f)

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 15 U.S.C. 78s(b)(2).

[13] 7 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41378; File Nos. SR–MSRB–98–06, SR–NASD–98–20, SR–NYSE–98–07]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; National Association of Securities Dealers, Inc.; and New York Stock Exchange, Inc.; Order Approving Proposed Rule Changes Regarding the Confirmation and Affirmation of Securities Transactions

May 7, 1999.

The Municipal Securities Rulemaking Board (''MSRB''), the National Association of Securities Dealers, Inc. (''NASD''), and the New York Stock Exchange, Inc. (''NYSE'') have filed with the Securities and Exchange Commission (''Commission'') proposed rule changes pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] proposing amendments to their confirmation/affirmation rules.[2] Notices of the proposals were published in the **Federal Register** on April 13, 1998.[3] The Commission received two comment letters.[4] For the reasons discussed below, the Commission is approving the proposed rule changes.

I. Description

Currently, the confirmation/affirmation rules of the MSRB, NASD, and NYSE (collectively referred to as self-regulatory organizations or ''SROs'')[5] require the SROs' broker-dealer members to use the facilities of a securities depository[6] for the electronic confirmation and affirmation of transactions in which the broker-dealer provides either delivery-versus-payment (''DVP'') or receive-versus-payment (''RVP'')[7] privileges to its customer. Broker-dealers generally extend DVP and RVP privileges only to their institutional customers.

Certain vendors of electronic trade confirmation (''ETC'') services have requested that they be allowed to provide confirmation/affirmation services for DVP and RVP trades even though they are not registered clearing agencies. Under the rule changes, the SROs' broker-dealer members will be able to comply with the confirmation/affirmation rules by using the facilities of either a registered clearing agency or a ''qualified vendor'' for the confirmation and affirmation of DVP and RVP transactions.[8]

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

[2] On February 18, 1998, the NYSE filed and on March 26, 1999, amended its proposed rule change (File No. SR–NYSE–98–07). On March 5, 1998, the NASD filed and on December 22, 1998, and February 17, 1999, amended its proposed rule change (File No. SR–NASD–98–20). On April 3, 1998, the MSRB filed and on April 16, 1999, amended its proposed rule change (File No. SR–MSRB–98–06). The amendments filed by the MSRB, NASD, and NYSE represent technical amendments to the proposed rule changes and as such do not require republication of notice.

[3] Securities Exchange Act Release Nos. 39830 (April 6, 1998), 63 FR 18060 (NYSE); 39831 (April 6, 1998), 63 FR 18057 (NASD); 39833 (April 6, 1998), 63 FR 18055 (MSRB). On May 1, 1998, the Commission extended the comment period for the proposals for thirty days. Securities Exchange Act Release No. 39944 (May 1, 1998), 63 FR 25531.

[4] Letters from Mari-Anne Pisarri, Esq., Pickard and Djinis, on behalf of Thomson Financial Services (''Thomson'') (May 12, 1998) and Ronald J. Kessler, Chairman, Operations Committee, Securities Industry Association (''SIA'') (June 1, 1998).

[5] The confirmation/affirmation rules are MSRB Rule G–15(d)(ii), NASD Rule 11860(a)(5), and NYSE Rule 387(a)(5).

[6] The term ''securities depository'' is defined in the SROs' confirmation/affirmation rules as a clearing agency that is registered under Section 17A of the Act, 15 U.S.C. 78q–1.

[7] DVP privileges allow an institutional seller to require cash payment before delivering its securities at settlement. RVP privileges allow an institutional buyer to pay for its purchased securities only when the securities are delivered.

[8] Just being a qualified vendor will not entitle an ETC vendor to provide ''matching'' services (in which broker-dealer confirmations are matched with institutional allocation instructions to produce affirmed confirmations) as part of its confirmation/affirmation system. The Commission has concluded

In order to become a qualified vendor under the rule changes, an ETC vendor will be required to certify to its customers that:

(1) With respect to its electronic trade confirmation/affirmation system, it has a capacity requirements, evaluation, and monitoring process that allows the vendor to formulate current and anticipated estimated capacity requirements;

(2) Its electronic trade confirmation/affirmation system has sufficient capacity to process the specified volume of data that it reasonably anticipates to be entered into its electronic trade confirmation/affirmation service during the upcoming year;

(3) Its electronic trade confirmation/affirmation system has formal contingency procedures, that the entity has followed a formal process of reviewing the likelihood of contingency occurrences, and that the contingency protocols are reviewed and updated on a regular basis;

(4) Its electronic trade confirmation/affirmation system has a process for preventing, detecting, and controlling any potential or actual systems integrity failures, and its procedures designed to protect against security breaches are followed; and

(5) Its current assets exceed its current liabilities by at least $500,000.

In addition, a qualified vendor will be required initially and annually to submit to the SROs and to the Commission staff a report prepared by independent audit personnel (referred to in the rule changes as ''Auditor's Report''). Each Auditor's Report must: (1) verify the certifications described above; (2) contain a risk analysis of all of the entity's information technology systems; and (3) contain the written response of the entity's management to the Auditor's Report's verifications and risk analysis. The Auditor's Report must be deemed not unacceptable by Commission staff.[9]

Qualified vendors will be subject to ongoing requirements under the rule changes. For each transaction in which it provides confirmation/affirmation services, a qualified vendor will be required to: (1) deliver a trade record to a registered clearing agency in the clearing agency's format; (2) obtain a control number for the trade record from the clearing agency; (3) cross reference the control number to the confirmation and subsequent affirmation of the trade; and (4) include the control number when delivering the affirmation of the trade to the clearing agency. A qualified vendor will be required to notify the SROs and the Commission staff in writing of any changes to its systems that significantly affect or have the potential to significantly affect its electronic trade confirmation/affirmation system. In addition, a qualified vendor will be required to supply supplemental information regarding its confirmation/affirmation system as requested by the SROs or by the Commission staff. If a qualified vendor intends to cease providing confirmation/affirmation services, it must notify the SROs and the Commission staff in writing.

II. Comment Letters

The Commission received two comment letters in response to the notices of the SROs' proposed rule changes.[10] The SIA Operations Committee stated that it supports the proposed rule changes. The Operations Committee expressed its belief that the proposed criteria should address the regulatory concerns associated with allowing new entrants into the clearance and settlement system while providing to the system the innovations and cost reductions that competition can produce.

Thomson stated that it was delighted that the SROs are amending their rules to allow commercial vendors to process institutional trade confirmations and affirmations.[11] However, as discussed below, Thomson believes that the SROs' proposals should be changed (1) to make the initial and ongoing process of designating qualified vendors objective and self-executing and (2) to limit the audit requirements to the areas that pose the most risk to post-trade information processing systems.

Thomson stated that it supports the fundamental approach of the Auditor's Reports. However, Thomson believes that the scope of the Auditor's Reports is too broad. Thomson particularly objected to the requirement that the Auditor's Report contain an audit of all of the entity's information technology systems. Thomson stated that it believes that auditing the certification that the entity would be required to provide under the proposed rule changes is sufficient to address the risk factors related to allowing unregulated entities to provide confirmation/affirmation services.

The Commission believes that the scope of the Auditor's Reports under the rule changes is reasonable. In particular, the Commission believes that the risk analysis component of the Auditor's Report is necessary to determine whether an entity should be a qualified vendor.

Because electronic confirmation/affirmation services are critical to the settlement of institutional securities trades, a breakdown in the confirmation/affirmation system could have a significant negative impact on the entire clearance and settlement system. Moreover, problems or insufficiencies in any aspect of a qualified vendor's information technology system could adversely affect the qualified vendor's confirmation/affirmation system. As a result, the Commission believes that it is appropriate for the Auditor's Reports to contain a risk analysis of the entity's information technology systems.

In addition, registered clearing agencies that provide confirmation/affirmation systems are already subject to extensive regulatory requirements. Among other things, registered clearing agencies must submit rule changes to the Commission for approval and are subject to inspections, including systems reviews, by the Commission staff. As a result, the Commission has continuous oversight and authority over registered clearing agencies' operations, including any confirmation/affirmation services they provide. Under the SROs' rule changes, qualified vendors will not be subject to such continuous oversight and authority. The Commission believes that the requirements under the rule changes with respect to the Auditor's Reports are reasonably intended to assure that the Commission and the SROs will be able to prevent an entity from becoming a qualified vendor if its confirmation/affirmation system poses a risk of compromising the safety and soundness of the national clearance and settlement system.

Thomson objected to the idea that the Commission staff would issue a no-action letter to indicate that an entity's initial Auditor's Report is not unacceptable. Thomson stated that the process of becoming a qualified vendor should be largely self-executing in that an entity should become a qualified vendor automatically as long as its initial Auditor's Report does not contain any findings by the auditor of material

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that matching services may be provided only by a registered clearing agency or by an entity that has received an exemption from clearing agency registration. Securities Exchange Act Release No. 39829 (April 6, 1998), 63 FR 17943.

[9] At this time, the Commission staff intends to indicate that an entity's initial Auditor's Report is not unacceptable by issuing a letter to the entity stating that it will not recommend enforcement action against any of the SROs' member organizations that elect to use the confirmation/affirmation systems of the entity. Subsequent Auditor's Reports submitted to the Commission staff by the qualified vendor will be considered acceptable unless the Commission staff otherwise informs the qualified vendor.

[10] *Supra* note 4.

[11] Thomson's comment letter refers to differences in the proposed rule changes from a statement of principles agreed to between the SIA and Thomson. The NASD noted in the first amendment to its rule filing that it ''does not believe that the statement of principles is relevant, much less controlling, with respect to whether there is a statutory basis for the proposed rule change.''

weakness. Thomson stated that under the self-executing process it supports, the Commission and the SROs ''would function more as report depositories than traditional application examiners.''

The Commission believes that in order for Commission staff to adequately review an Auditor's Report to determine whether it is not unacceptable, the staff must do more than simply read the report to determine whether it contains a finding of material weakness. Under the rule changes, the Commission staff may deem an Auditor's Report unacceptable for any reason if it believes that the report demonstrates that an entity would not be capable of providing confirmation/affirmation services in a manner that would not compromise the integrity of the national clearance and settlement system.

Thomson also contended that there is no legal context in which the Commission staff may issue no action letters to qualified vendors. Thomson stated that the only party to which the Commission staff is authorized to recommend or not recommend enforcement action is the Commission itself and that any such recommendation or decision to not make a recommendation must be related to the federal securities laws or Commission rules promulgated thereunder. Thomson expressed concern that the proposed rule changes do not provide objective standards that the Commission staff will use when considering whether to grant the initial no-action letter.

The Commission believes that the use of a no-action letter to indicate that an entity's initial Auditor's Report is not unacceptable is a reasonable method for indicating that an entity is a qualified vendor under the SROs' rules. Section 21 of the Act, which authorizes the Commission to investigate and to bring enforcement action with respect to violations of the rules of a self-regulatory organization by any person, provides a legal context for the issuance of a no-action letter to qualified vendors.[12] The Commission also believes that the rule changes are reasonably designed to provide objective guidance to the Commission in its review of the Auditor's Reports and to the SROs to deny ''qualified'' status to and to terminate the ''qualified'' status of ETC vendors whose confirmation/affirmation services fall below acceptable standards.

Thomson stated that it agrees with the requirement that a qualified vendor notify the SROs and the Commission staff if it decides to stop providing confirmation/affirmation services. Thomson objected to a provision in the NASD's proposed rule change that states a qualified vendor may cease to be qualified if the Commission staff (1) deems an Auditor's Report unacceptable either because it contains any finding of material weakness or for any other identified reasons or (2) notifies the qualified vendor that it is no longer qualified.

As noted above, the Commission staff may deem an Auditor's Report unacceptable for any reason if it believes that the report demonstrates that an entity would not be capable of providing confirmation/affirmation services in a manner that would not compromise the integrity of the national clearance and settlement system. In addition, the Commission staff may revoke a no-action position if it determines that a revocation is consistent with the public interest or the protection of investors.

III. Discussion

Under Section 19(b)(2) of the Act, the Commission is directed to approve the SROs' proposed rule changes if it finds that they are consistent with the requirements of the Act and the rules and the rules and regulations thereunder applicable to the SROs.[13] Sections 6(b)(5), 15A(b)(6), and 15B(b)(2)(C) of the Act[14] require, among other things, that the SROs' rules be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. Sections 6(b)(8), 15A(b)(9), and 15B(b)(2)(C) of the Act[15] also require that the SROs' rules not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. For the reasons discussed below, the Commission believes that the SROs' proposed rule changes are consistent with their obligations under the Act.

The Commission believes that the changes to the SROs' confirmation rules are consistent with the SROs' obligations under the Act because they will require unregulated entities that wish to provide confirmation/affirmation services to establish links and interfaces with a registered clearing agency. This requirement should increase cooperation and coordination among the SROs' members, registered clearing agencies, and entities that become qualified vendors under the rule changes.

In addition, in reviewing the proposed rule changes the Commission has considered whether the proposed rule changes would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Commission believes that the rule changes have been carefully designed to allow unregistered ETC vendors to provide confirmation/affirmation services for institutional trades in a manner which is not unduly burdensome for ETC vendors and which preserves the safety and soundness of the national system for the clearance and settlement of securities transactions. Therefore, the Commission believes that the SROs' proposed rule changes should not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposals are consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore *ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR–MSRB–98–06, SR–NASD–98–20, SR–NYSE–98–07) be and hereby are approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–12139 Filed 5–12–99; 8:45 am]

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[12] 15 U.S.C. 78u.

[13] 15 U.S.C. 78s(b)(2).

[14] 15 U.S.C. 78f(b)(5), 78o–3(b)(6), and 78o–4(b)(2)(C).

[15] 15 U.S.C. 78f(b)(8), 78o–3(b)(9), and 78o–4(b)(2)(C).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41367; File No. SR–NASD–98–88]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Listing and Continued Listing Determinations

May 4, 1999.

On November 27, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to