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 communications relating 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 and the rules and regulations thereunder. Section 6(b)(5) of the Act states that the rules of an exchange must be designed to facilitate securities transactions and to remove impediments 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, 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) 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.
Margaret H. McFarland, Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION


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.

I. Description

Currently, the confirmation/affirmation rules of the MSRB, NASD, and NYSE (collectively referred to as “SROs”) require the SROs’ broker-dealer members to use the facilities of a securities depository for the electronic confirmation and affirmation of transactions in which the broker-dealer provides either delivery-versus-payment (“DVP”) or receive-versus-payment (“RVP”) 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.

In 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 publication of notice.

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") promoting amendments to their confirmation/affirmation rules. Notices of the

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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 process 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 contain an audit of all systems. Thomson stated that it believes that the scope of the Auditor’s Reports under the proposed rule changes is too broad. Thomson particularly objected to the idea that the Auditor’s Report contains an audit of all of the entity’s information technology systems. Thomson stated that it believes that auditing the certification that the entity provides under the proposed rule changes is sufficient to address the risk factors related to allowing unregulated entities to provide confirmation/affirmation services.

The Commission believed 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 result in significant operational problems and settlements could be adversely affected. 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 services are 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 significant risk of compromising the safety and soundness of the national clearing 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
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. 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 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.
Margaret H. McFarland,
Deputy Secretary.

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...