

limits while permitting market participants to maintain, after the split of the Broker/Dealer Index, their current level of investment in the Broker/Dealer Index option contracts. As noted above, the increased position and exercise limits of 30,000 contracts will revert to their original limit of 15,000 contracts at the expiration of the further expiration month of non-LEAPs as established on the date of the split, which is expected to be October 1998.¹⁶

The Commission further believes that doubling the Broker/Dealer Index's divisor will not have an adverse market impact on the trading in these options. After the split, the Broker/Dealer Index will continue to be comprised of the same stocks with the same weightings and will be calculated in the same manner, except for the proposed change in the divisor. The Commission notes that the Amex's surveillance procedures also will remain the same.

Finally, the Commission notes that, prior to implementing the changes, the Exchange will provide advance notice of the proposed changes to the Broker/Dealer Index to its membership through an information circular.¹⁷ The Broker/Dealer Index is expected to be reduced by one-half prior to the April 17, 1998 expiration. The Amex has committed to provide notice to its membership at least two weeks prior to the implementation of the proposed change to the Broker/Dealer Index value and the resulting adjustments to the outstanding Broker/Dealer Index options contracts. The Commission believes that the proposed time frame should allow for adequate notice to be provided to the holders of all open positions in Broker/Dealer Index options and other market participants.

The Commission finds good cause for partially approving the proposed rule prior to the thirtieth day after publication of the proposed rule change in the **Federal Register**. The Commission believes that the proposed split of the Broker/Dealer Index raises no new or novel regulatory concerns. In addition, the Commission notes that since the initial filing of the proposal,

the value of the Broker/Dealer Index has increased to the extent that present value is in excess of 1000. As the system used to calculate the value of the Index cannot accommodate four-digit numbers, all calculations of the value of options on the Broker/Dealer Index must be performed manually on a continuous basis for each series. The Commission believes that to ensure the continued accuracy and reliability of the values of Broker/Dealer Index options contracts, the accelerated approval of the portion of the proposal relating to the Broker/Dealer Index is appropriate. In addition, the Amex has ensured that market participants will receive adequate notice prior to implementation of the adjustments to the index value and outstanding Broker/Dealer Index options. Accordingly, the Commission finds that good cause exists, consistent with Section 6(b)(5) of the Act,¹⁸ to partially accelerate approval of the proposed rule change, as discussed above.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁹ that the portion of the proposed rule change (SR-Amex-98-11) relating to the Broker/Dealer Index is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39771; File No. SR-NASD-98-15]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Elimination of Position and Exercise Limits for FLEX Equity Options

March 19, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 17, 1998, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange

Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

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

NASD Regulation is proposing to amend Rule 2860(b) of the National Association of Securities Dealers, Inc. ("NASD" or "Association"), to establish the NASD member firms and their customers shall have the same position and exercise limits for FLEX Equity Options as the firms that are also members of the exchange on which such FLEX Equity Options trade. Below is the text of the proposed rule change. Proposed new language is in italics.

Rule 2860. Options

* * * * *

(b) Requirements.

(1) General.

(A) Applicability—This Rule shall be applicable (i) to the trading of options contracts issued by The Options Clearing Corporation and displayed on The Nasdaq Stock Market and to the terms and conditions of such contracts; (ii) to the extent appropriate unless otherwise stated herein, to the conduct of accounts, the execution of transactions, and the handling of orders in exchange-listed options by members who are not members of an exchange on which the option executed is listed; (iii) to the extent appropriate unless otherwise stated herein, to the conduct of accounts, the execution of transactions, and the handling of orders in conventional options; and (iv) other matters related to options trading.

Unless otherwise indicated herein, subparagraphs (3) through (12) shall apply only to options displayed on Nasdaq and standardized and conventional on common stock and subparagraphs (13) through (24) shall apply to transactions in all options as defined in paragraph (a), including common stock. *The position and exercise limits for FLEX Equity Options for members who are not also members of the exchange on which FLEX Equity Options trade shall be the same as the position and exercise limits as applicable to members of the exchange on which such FLEX Equity Options are traded.*

* * * * *

¹⁶ According to the Amex, October 1998 will be the furthest expiration month for non-LEAPs on the Broker/Dealer Index for purposes of the reversion of position and exercise limits to their original levels. The Amex has agreed to provide notice to its members to remind them of the need to reduce their positions at least one month prior to the date that the position and exercise limits revert to their original levels. Per telephone conversation between Scott Van Hatten, Legal Counsel, Derivative Securities, Amex, and Deborah Flynn, Division, Commission, on March 19, 1998.

¹⁷ Per telephone conversation between Scott Van Hatten, Legal Counsel, Derivative Securities, Amex, and Deborah Flynn, Division, Commission, on March 19, 1998.

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. § 78s(b)(1).

² 17 CFR 240.19b-4.

(2) Definitions.

The following terms shall, unless the context otherwise requires, have the stated meanings:

* * * * *

(W) *Flex Equity Option*—The term “Flex Equity Option” means any options contract issued, or subject to issuance by, The Options Clearing Corporation whereby the parties to the transaction have the ability to negotiate the terms of the contract consistent with the rules of the exchange on which the options contract is traded.

(X)–(ZZ) Redesignated accordingly.

* * * * *

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 5, 1997, The Nasdaq Stock Market, Inc. (“Nasdaq”) filed a proposed rule change with the Commission to: (1) amend NASD Rule 2860(b) to disaggregate conventional equity options from exchange-traded equity options for position limit purposes and establish a new conventional equity option base position limit of three times the limit allowed for standardized options on the same underlying security;³ (2) amend the NASD’s OTC Collar Aggregation Exemption to provide that the exemption may be utilized with respect to an entire conventional equity options position, not just that portion of the position that was established pursuant to the NASD’s Equity Option Hedge Exemption; and (3) eliminate position and exercise limits on FLEX Equity Options. Shortly thereafter, on

September 9, 1997,⁴ the Commission approved a two-year pilot program (“Pilot Program”) to eliminate position and exercise limits for FLEX Equity Options, which are traded on the American Stock Exchange, Inc. (“Amex”), the Chicago Board Options Exchange, Inc. (“CBOE”), and the Pacific Exchange, Inc. (“PCX”) (collectively “Options Exchanges”).⁵ In light of the adoption of the Pilot Program, NASD Regulation seeks to amend its rules to be consistent with the rules of the Options Exchanges. The NASD has withdrawn its proposed rule change (SR–NASD–97–67) dated September 5, 1997, and recently refiled a proposed rule change addressing items (1) and (2) described above.⁶ The NASD determined to submit the instant rule filing concerning FLEX Equity Options separately in order to obtain expedited approval, which is necessary to avoid inconsistencies between the rules of the NASD and the Options Exchanges.

The NASD’s option position and exercise limits apply, among other things, to “the conduct of accounts, the execution of transactions, and the handling of orders in exchange-listed options by members who are not members of an exchange on which the option executed is listed.”⁷ As currently written, the NASD’s position limits do not provide any exemption for FLEX Equity Options. Consequently, NASD member firms who are not members of an Options Exchange and who effect proprietary or customer FLEX Equity Options through members of the Options Exchanges are subject to options position and exercise limits. In contrast, Options Exchange member firms executing such orders in FLEX Equity Options are not subject to NASD options position and exercise limits.⁸ NASD Regulation does not believe that NASD and Options Exchange member firms and their customers should be subject to different position and exercise

limits with respect to FLEX Equity Options.

To reconcile the NASD rules with those of the Options Exchanges, the proposed rule change provides that the position and exercise limits for FLEX Equity Options⁹ for NASD members who are not members of an Options Exchange shall be the same as the position and exercise limits applicable to members of the exchange on which such FLEX Equity Options are traded. Moreover, since the proposed rule change incorporates the position and exercise limits for FLEX Equity Options established by the Options Exchanges, the elimination of position and exercise limits for FLEX Equity Options will continue only as long as the Pilot Program remains in effect, subject, of course, to extensions by the Commission or the adoption of a rule permanently eliminating position and exercise limits for FLEX Equity Options.

Finally, although the proposed rule change does not specify any of the reporting, margin and capital charge requirements of the Pilot Program, NASD members and their customers will be effectuating such requirements through the Options Exchange member (who is subject to the requirements of the Pilot Program) effecting the FLEX Equity Option transaction.

2. Statutory Basis

NASD Regulation believes the proposed rule change is consistent with Section 15A(b)(6) of the Act,¹⁰ which requires, among other things, that the rules of a national securities 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. Specifically, NASD Regulation believes that amending its rules to incorporate changes in the position and exercise limits for FLEX Equity Options as a result of the Pilot Program achieves these purposes.

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

NASD Regulation 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.

⁹ The proposed rule change defines FLEX Equity Options as any options contract issued, or subject to issuance by, The Options Clearing Corporation whereby the parties to the transaction have the ability to negotiate the terms of the contract consistent with the rules of the exchange on which the options contracts is traded.

¹⁰ 15 U.S.C. 78o–3.

³ Telephone Conversation between Gary L. Goldsholle, Office of General Counsel, NASD Regulation, and Christine Richardson, Division of Market Regulation, Commission, February 26, 1998.

⁴ See Exchange Act Release No. 39032 (September 9, 1997), 62 FR 48683 (September 16, 1997).

⁵ FLEX Equity Options, are exchange-traded options issued by The Options Clearing Corporation that give investors the ability, within specified limits, to designate certain terms of the option (i.e., the exercise price, exercise style, expiration date, or option type). The Commission notes that it recently approved rules to permit the Philadelphia Stock Exchange to list and trade FLEX Equity Options. See Exchange Act Release No. 39549 (January 14, 1998), 63 FR 3601 (January 23, 1998).

⁶ See SR–NASD–98–22.

⁷ NASD Rule 2860(b)(1)(A).

⁸ In other words, NASD member firms that are also members of an Options Exchange are not subject to the NASD’s options position and exercise limits with regard to FLEX Equity Options.

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

No written comments were solicited or received with respect to the proposed rule change.

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

NASDA Regulation has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder. Specifically, the Commission finds that the proposed rule change promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In general, the Commission believes that the proposed rule change, eliminating position and exercise limits for FLEX Equity Options for members of the NASD who are not also a member of an Options Exchange, is appropriate given that the Commission recently approved similar proposed rule changes for the Options Exchanges.¹¹ In the approval order for the Options Exchanges, the Commission cited several reasons for approving the elimination of position and exercise limits for FLEX Equity Options on a pilot basis. Those reasons apply here as well. First, the FLEX Equity Options market is characterized by large, sophisticated institutional investors (or extremely high net worth individuals), who have both the experience and ability to engage in negotiated, customized transactions. For example, with a required minimum size of 250 contracts to open a transaction in a new series, FLEX Equity Options are designed to appeal to institutional investors, and it is unlikely that retail investors would be able to engage in options transactions at that size. Second, all of the Options Exchanges' other current rules and provisions governing FLEX Equity Options remain

applicable. Third, the Options Clearing Corporation will serve as the counterparty guarantor in every exchange-traded transaction. Fourth, the elimination of position and exercise limits for FLEX Equity Options potentially could expand the depth and liquidity of the FLEX Equity Option market without significantly increasing concerns regarding intermarket manipulations or disruptions of the options or the underlying securities. Finally, the Exchanges' surveillance programs and enhanced monitoring procedures will be applicable to the trading of FLEX Equity Options and should detect and deter trading abuses arising from the elimination of position and exercise limits.

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 thereof in the **Federal Register**. The Commission notes that the current rules have the effect of placing certain NASD member firms and their customers at a competitive disadvantage to Options Exchange member firms with respect to FLEX Equity Options position and exercise limits because the latter are not subject to the NASD's position and exercise limits. The Commission believes that accelerated approval of the proposed rule change will conform the NASD rules concerning position and exercise limits for FLEX Equity Options with those of the Options Exchanges, thereby resulting in consistent application of the position and exercise limits for FLEX Equity Options. Accordingly, the Commission believes that it is consistent with Section 15A of the Act to approve the proposed rule change on an accelerated basis.

IV. 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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at

the Commission's Public Reference Room. 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-NASD-98-15 and should be submitted by April 16, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-NASD-98-15) is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39774; File No. SR-NYSE-98-05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Material

March 19, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on February 6, 1998, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 Exchange seeks to extend the pilot period during which recent changes to Exchange Rule 451, "Transmission of Proxy Material," and Exchange Rule 465, "Transmission of Interim Reports and Other Material" (collectively the "Rules"), became operative. The Rules establish guidelines for the reimbursement of expenses by issuers to NYSE member

¹¹ See Exchange Act Release No. 39032 (September 9, 1997), 62 FR 48683 (September 16, 1997).

¹² 15 U.S.C. § 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).