released after the Exercise Cut-Off Time is activity inconsistent with just and equitable principles of trade. The proposal also states that the requirements specified in Section 63(b) will not apply to standardized foreign currency options or standardized index option products.

The NASD represents that the proposed rule change reflects a coordinated effort among all the options exchanges, the NASD, and OCC. In particular, the NASD represents that the proposed exercise advice procedure has been reviewed and endorsed by the Intermarket Surveillance Group ("ISG"),14 which has approved the issuance by the options exchanges of a circular explaining the operation of the new exercise cut-off provisions. The NASD notes that the Commission has already approved similar rule proposals from each of the national options exchanges. 15

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 15A(b)(6) of the Act. 16 Specifically, the Commission believes that the NASD's proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to protect investors and the public interest.

Although, as noted by the NASD, all options exchanges currently have a uniform 5:30 p.m. (E.S.T.) Exercise Cut-Off Time on Expiration Fridays for expiring equity options, OCC's rules permit OCC to accept exercise notices

for expiring equity options from clearing firms until 12:00 a.m. (E.S.T.) on the expiration date (i.e., the Saturday after an Expiration Friday). This additional time within which to receive exercise notices from clearing members was provided to accommodate corrections of mistakes made in good faith, trade reconciliations, and certain exceptional circumstances that affected a customer's ability to inform its brokerage firm or affected a firm's ability to receive final exercise decisions before the Exercise Cut-Off Time. Nevertheless, in order to prevent situations such as the one cited by the NASD,17 the Commission believes that it is appropriate for the Exchange to make it clear in its rules that the submission of a Contrary Exercise Advice on the basis of material information released after the Exercise Cut-Off Time will be activity deemed inconsistent with just and equitable principles of trade.18

The Commission believes that the proposed exercise procedures should enhance the NASD's ability to surveil for violations of Section 63 of the Practice Code by providing an enhanced audit trail for identifying late exercises. Specifically, every time an exercise decision is made contrary to OCC Rule 805, a Contrary Exercise Advice must be filed as discussed above, in addition to submitting an exercise instruction to a clearing member as is currently required by either the rules of the options exchanges or by exchange clearing members.¹⁹ Similarly, the proposal requires that documentation must be prepared and submitted either to the proper options exchange or to the NASD whenever a late exercise decision is made in reliance on one of the exceptions to Section 63, with the burden of establishing the existence of the exception on the party submitting the Contrary Exercise Advice. The proposed rule change, therefore, should facilitate the Exchange's ability to monitor and enforce compliance with Section 63. Accordingly, because the proposed rule change significantly

bolsters the NASD's existing procedures

regarding the exercise of expiring equity options and helps to ensure compliance with their rules, the Commission believes that the proposal is consistent with the Act.²⁰

Even though the proposed rule change significantly improves the NASD's audit trail with respect to late exercises, the Commission believes that the NASD should continue to examine ways of ensuring compliance with the Exercise Cut-Off Time and the other requirements of Section 63.²¹ Furthermore, the Commission also encourages the NASD to review the permitted exceptions to Section 63 and consider ways of establishing parameters as to the extent of the exceptions.²²

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Specifically, the Commission notes that the proposed rule change is substantively similar to proposals submitted by the national options exchanges and recently approved by the Commission. 23 Additionally, the proposals by the other options exchanges are being implemented in time for the next Expiration Friday on February 17, 1995.24 Accelerated approval of the NASD's proposal is therefore necessary in order to ensure that the options exchanges and their members as well as the NASD and its members are operating under uniform procedures for exercising expiring equity options. Finally, the proposal was noticed for the full 21-day comment period without any comments being received by the Commission. Accordingly, the Commission believes that it is consistent with Section 15A(b)(6) of the Act to approve the proposed rule change on an accelerated basis.

It Is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁵ that the

¹⁴ ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance information sharing arrangements in the stock and options markets. See Intermarket Surveillance Sharing Group Agreement, July 14, 1983. The members of ISG are the American Stock Exchange, Inc., the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Chicago Stock Exchange, Inc., the Cincinnati Stock Exchange, Inc., the NASD, the New York Stock Exchange, Inc., the Pacific Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc.,

¹⁵ See Securities Exchange Act Release Nos.
34806 (October 7, 1994), 59 FR 52339 (October 17, 1994) (order approving File No. SR-PHLX-93-37);
34807 (October 7, 1994), 59 FR 52329 (October 17, 1994) (order approving File No. SR-CBOE-94-06);
34808 (October 7, 1994), 59 FR 52324 (October 17, 1994) (order approving File No. SR-AMEX-94-01);
34810 (October 7, 1994), 59 FR 52334 (October 17, 1994) (order approving File No. SR-PSE-94-12);
and 34818 (October 11, 1994), 59 FR 52331 (October 17, 1994) (order approving File No. SR-NYSE-94-12).

^{16 15} U.S.C. 78o(b)(6) (1982).

¹⁷ See supra note 7.

¹⁸ The Commission believes that the Exercise Cut-Off Time serves an important investor protection function. Specifically, the Exercise Cut-Off Time protects holders of short positions in equity options from unanticipated events occurring after the close of the market. As the Commission has previously stated, if expiring equity options were allowed to be exercised after the Exercise Cut-Off Time for reasons other than the exceptions set forth above, the Commission believes that options writers could be unfairly disadvantaged with respect to options holders by not having the same opportunity to react to such unanticipated events. See Securities Exchange Act Release No. 19589 (March 10, 1983), 48 FR 11196 (March 16, 1983).

¹⁹ See supra note 5.

²⁰ The Commission notes that the NASD has distributed a notice to member organizations describing the new procedures set forth above and notifying member organizations as to the scheduled implementation of those procedures in time for the next Expiration Friday on February 17, 1995. See NASD Notice to Members 94–102, "New Exercise Advice Procedures for Expiring Equity Options," dated December 23, 1994.

²¹ For example, the NASD may wish to consider adopting additional penalties in those situations where a member organization is unable to establish the existence of one of the exceptions to Section 63 of the Practice Code for a particular trade or trades.

²² For example, the NASD may want to define expressly in the rule the circumstances that qualify for a good faith exception.

²³ See supra note 15.

²⁴See supra note 10.

^{25 15} U.S.C. 78s(b)(2). (1982).