filing will also be available for inspection and copying at the principal office of MSTC. All submissions should refer to File No. SR–MSTC–94–19 and should be submitted by February 24, 1995.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–MSTC–94–19) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

## Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34–35287; File No. SR–NYSE– 39; SR–Phlx–94–29; SR–PSE–94–34; SR– BSE–94–15; SR–CHX–94–28; SR–NASD–94– 67; SR–CBOE–94–55]

Self-Regulatory Organizations; New York Stock Exchange, Inc., Philadelphia Stock Exchange, Inc., Pacific Stock Exchange, Inc., Boston Stock Exchange, Inc., Chicago Stock Exchange, Inc., National Association of Securities Dealers, Inc., and Chicago Board Options Exchange; Order Granting Accelerated Approval to Proposed Rule Change Adopting Rules for Short Position Reporting

## January 27, 1995.

On October 27, 1994, the New York Stock Exchange, Inc. ("NYSE"), October 20, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx"), November 23, 1994, the Pacific Stock Exchange, Inc. ("PSE"), November 28, 1994, the Boston Stock Exchange, Inc. ("BSE"), December 12, 1994, the Chicago Stock Exchange, Inc. ("CHX"), December 2, 1994, the National Association of Securities Dealers, Inc. ("NASD"),1 and on January 3, 1995, the Chicago Board Options Exchange ("CBOE") (collectively, the "SROs") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b–4 thereunder,<sup>3</sup> proposed rule changes to

facilitate uniform short position reporting requirements.<sup>4</sup>

The proposed rule change filed by the CBOE was published for comment in Securities Exchange Act Release No. 35227 (January 13, 1995), 60 FR 4208 (January 20, 1995). In addition, all of the other proposed rule changes were published for comment in Securities Exchange Act Release No. 35147 (December 23, 1994), 60 FR 518 (January 4, 1995). No comments were received on the proposal from either notice publication.

The proposed rule changes emanated from an initiative by the SROs, as Intermarket Surveillance Group ("ISG")<sup>5</sup> members, to ensure uniform short position reporting in U.S. traded securities.<sup>6</sup> Although the specific language of each proposed rule change differs slightly, the goal of the SROs is uniform in proposing the adoption of the above referenced rules. Generally, the SROs' goal is to ensure that a brokerdealer registered in the United States reports its open short positions to the SRO that is the broker-dealer's **Designated Examining Authority** ("DEA"). If the particular brokerdealer's DEA does not have rules governing the reporting of short interest positions, then the broker-dealer is to report to another SRO of which it is a member. Non-self-clearing brokerdealers, however, will be considered to have satisfied their reporting requirements by making the appropriate arrangements with their respective clearing organizations.

Substantively, the new reporting requirements will continue to include stocks and warrants, including odd lots, in each such security traded on a United States securities exchange or association. Further, the reports will continue to include both customer and proprietary positions, and for those broker-dealers with more then one "account" with a short position in the same stock or warrant, the combined

<sup>5</sup> ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements. *See* Intermarket Surveillance Group Agreement, July 14, 1983. aggregate should be reported. In this regard, the Commission notes that like accounts should be netted, and then multiple accounts should be aggregated.<sup>7</sup>

The format, time, and method of reporting will be prescribed by each SRO receiving short interest data.<sup>8</sup> Each such SRO will electronically send the data to the Securities Industry Automation Corporation ("SIAC").9 With respect to listed securities, SIAC will in turn consolidate all data in each security to generate a number representing the national short position in each such security. The NASD, however, will be performing this function with respect to Nasdaq securities. All Nasdaq short interest will be reported to the NASD by its members. Firms not members of the NASD will report their short interest positions in Nasdaq securities to an SRO, which will forward it to SIAC, which will then forward Nasdaq data to the NASD. The NASD will compile all short interest data in Nasdaq securities and send it, along with a consolidated national short interest position for each security, to SIAC for dissemination purposes.

Several exceptions to the general requirements outlined above are clarified in the ISG circular to members entitled "Consolidated Reporting of Short Interest Positions." First, members and member organizations for which the CHX is the DEA, and who are selfclearing members of the Midwest Clearing Corporation ("MCC"), will have their reporting requirement satisfied automatically through the CHX's ability to capture the required information from the MCC. Further,

<sup>&</sup>lt;sup>9</sup>17 CFR 200.30–3(a)(12) (1994).

<sup>&</sup>lt;sup>1</sup>In addition, the NASD filed Amendment No. 1 on January 11, 1995, to clarify who must report to the NASD, what the entities must report, and the mechanics of how to transmit such report. Because the Amendment does not substantively change the proposal, the Commission is not publishing it for comment. *See* letter from Joan C. Conley, Secretary, NASD, to Mark Barracca, Attorney, SEC, dated January 11, 1995.

<sup>&</sup>lt;sup>2</sup>15 U.S.C. 78s(b)(1) (1988).

<sup>317</sup> CFR 240.19b-4 (1991).

<sup>&</sup>lt;sup>4</sup> "Short" positions to be reported are those resulting from "short" sales as defined in SEC Rule 3b-3, but excludes positions resulting from sales specified in clauses (1), (6), (7), (8), (9) and (10) of paragraph (e) of SEC Rule 10a-1. Also to be excluded are "short" positions carried for other members and member organizations reporting for themselves.

<sup>&</sup>lt;sup>6</sup> Specifically: (1) The BSE is adding § 38 to Chapter II of its Rules; (2) the CBOE is adopting interpretation and policy .02 to its Rule 15.1; (3) the CHX is adopting Article XI, Rule 9, and an interpretation thereto; (4) the NASD is amending Article III, Section 41; (5) the NYSE is amending Rule 421; (6) the PSE is adopting Rule 2.6(f); and (7) the Phlx is adopting Rule 786.

<sup>&</sup>lt;sup>7</sup> The aggregation requirement, however, does not include the netting of short interest against long in a given security across "non-like" accounts. For example, if a broker dealer has three accounts for different customers, and account 1 has short interest of 100 shares, account 2 has short interest of 225 shares, and account 3 is long 150 shares, the broker dealer shall report short interest of 325, not 175. See CHX proposed Article XI, Rule 9, Interpretation and Policy .01. If, however, in the above example account 1 was the firm's customer account, and accounts 2 and 3 were the firm's proprietary accounts, then the firm would net accounts 2 and 3 to ascertain its proprietary account position (in this case short 75 shares). The firm would then report the aggregate of its customer account short interest position of 100 shares and its proprietary short interest position of 75 sharesshares short in total—for the firm in the particular security

<sup>&</sup>lt;sup>8</sup>Monthly reporting will remain in effect for the present but more frequent reporting might be initiated in the future. *See* Circular sent by the ISG to all members and member organizations titled "Consolidated Reporting of Short Interest Positions."

<sup>&</sup>lt;sup>9</sup> SIAC is a jointly owned subsidiary of the NYSE and the Amex. Among other things, it handles the majority of the automation needs of the ISG.