

instating the PMM standards set forth in NASD Rule 4612 would be extremely disruptive to the market and harmful to investors.

Nasdaq also notes that the Commission has signaled to the securities industry that it is considering fundamental changes to Rule 10a-1 of the Exchange Act that could impact the manner in which Nasdaq and the other markets regulate short sales. On October 20, 1999, the Commission issued a Concept Release on Short Sales in which it sought comment on, among other things, revising the definition of short sale, extending short sale regulation to non-exchange listed securities, and eliminating short sale regulation altogether.¹⁸ Nasdaq believes it would be inappropriate for Nasdaq to dramatically alter its regulation of short sales while the Commission is considering fundamentally changing Rule 10a-1 of the Exchange Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 9, including whether the proposed Amendment 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 filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-98-26 and should be submitted by October 26, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of the Amendment

After careful consideration, the Commission finds, for the reasons set forth below, that the extension of the Short Sale Rule pilot and the suspension of the existing PMM standards until June 30, 2001 is consistent with the requirements of the

Act and the rules and regulations thereunder. In particular, the extension is consistent with Section 15A(b)(6)¹⁹ of the Act, which requires that the NASD's rules be designed, among other things, to remove impediments to and perfect the mechanism of a free and open market and a national market system and to promote just and equitable principles of trade.

The Commission finds that continuation of the Short Sale Rule pilot and the continued suspension of the current PMM standards will maintain the status quo while the Commission considering amending Rule 10a-1 under the Exchange Act.

The Commission finds good cause for approving the extension of the Short Sale Rule pilot and the suspension of existing PMM standards prior to the 30th day after the date of publication of notice of the filing in the **Federal Register**. It could be disruptive to the Nasdaq market and confusing to market participants to reintroduce the previous PMM standards while new PMM standards are being developed, and while the Commission is considering amending Rule 10a-1 under the Exchange Act.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,²⁰ that Amendment No. 9 to the proposed rule change, SR-NASD-98-26, which extends the NASD Short Sale Rule pilot and the suspension of the current PMM standards to June 30, 2001, is approved on an accelerated basis.²¹

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43383; File No. SR-NASD-00-48]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Require an Issuer To Publicly Disclose the Receipt of a Delisting Notice for Failure To Comply With the Continued Listing Standards of The Nasdaq Stock Market

September 28, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 10, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. 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

Nasdaq proposes to require issuers to publicly disclose the receipt of a delisting notice for failure to comply with Nasdaq's continued listing requirements. Below is the text of the proposed rule change. Proposed new language is in *italics*. Proposed deletions are in *brackets*.

Rule 4120. Trading Halts

(a) Authority to Initiate Trading Halts.

In circumstances in which Nasdaq deems it necessary to protect investors and the public interest, Nasdaq may, pursuant to the procedures set forth in paragraph (b):

(1)-(4) No change.

(5) Halt trading in a security listed on Nasdaq when Nasdaq requests from the issuer information relating to:

(i) No change;

(ii) The issuer's ability to meet Nasdaq listing qualification requirements, as set forth in the Rule 4300, [and] 4400, and 4800 Series; or

(iii) No change.

(b) No change.

¹⁹ 15 U.S.C. 78o-3(b)(6).

²⁰ 15 U.S.C. 78s(b)(2).

²¹ In approving Amendment No. 9, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²² 17 CFR 200.30-3(a)(12).

¹⁸ See Securities Exchange Act Release No. 42037 (October 20, 1999), 64 FR 57996 (October 28, 1999).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

IM-4120-2. Disclosure of Written Notice of Staff Determination

Rule 4815(b) requires that an issuer make a public announcement through the news media disclosing the receipt of a Written Notice of Staff Determination ("Staff Determination") to prohibit continued listing of the issuer's securities under Rule 4815(a) as a result of the issuer's failure to comply with the continued listing requirements, and the Rule(s) upon which the Staff Determination was based. Such public announcement shall be made as promptly as possible, but not more than seven calendar days following the receipt of the Staff Determination. If the public announcement is not made by the issuer within the time allotted, trading of its securities shall be halted, even if the issuer appeals the Staff Determination as set forth in Rule 4820. If the issuer fails to make the public announcement by the time that the Listing Qualifications Panel issues its decision, that decision will also determine whether to delist the issuer's securities for failure to make the public announcement.

Rule 4815(b) does not relieve an issuer of its obligation to make a materially assessment of the pending delisting action as it may relate to the disclosure requirements of the federal securities laws, nor should it be construed as providing a safe harbor under the federal securities laws. It is suggested that the issuer consult with corporate/securities counsel in assessing its disclosure obligations under the federal securities laws.

(Existing IM-4120-2 and IM-4120-3 renumbered as IM-4120-3 and IM-4120-4)

Rule 4815. Written Notice of Staff Determination

(a) If the Listing Qualifications Department or the Listing Investigations Department reaches a determination (the "Staff Determination") to limit or prohibit the initial or continued listing of an issuer's securities, it will notify the issuer, describe the specific grounds for the determination, identify the quantitative standard or qualitative consideration set forth in the Rule 4000 Series that the issuer has failed to satisfy, and provide notice that upon request the issuer will be provided an opportunity for a hearing under this Rule 4800 Series.

(b) An issuer that receives a Staff Determination to prohibit continued listing of the issuer's securities under Rule 4815(a) shall make a public announcement through the news media disclosing the receipt of the Staff

Determination, including the Rule(s) upon which the Staff Determination was based. Prior to the release of the public announcement, an issuer shall provide such disclosure to Nasdaq's Stock Watch and Listing Qualifications Departments.* The public announcement shall be made as promptly as possible, but not more than seven calendar days following receipt of the Staff Determination.

* Notification may be provided to the StockWatch section of Nasdaq's MarketWatch Department at 1-800-537-3929 or (301) 590-6411 (telephone), (301) 590-6482 (facsimile) and to the Hearings Department of Nasdaq's Listing Qualifications Department at (301) 978-8079 (telephone), (301) 978-8080 (facsimile).

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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

The purpose of the proposed rule change is to require a Nasdaq issuer to publicly disclose the receipt of a written delisting notice for failure to comply with the continued listing requirements ("Staff Determination"). Since Nasdaq does not currently have such a requirement, some Nasdaq issuers publicly disclose the receipt of a Staff Determination while other issuers do not make the disclosure. Nasdaq believes that requiring public disclosure of the receipt of a Staff Determination serves to protect present and potential investors in an issuer's securities.

In order to provide investors with the greatest protection possible, Nasdaq believes that the public announcement should not only disclose the receipt of a Staff Determination, but also indicate the Marketplace Rule(s) upon which the Staff Determination was based. By furnishing investors with the specific continued listing requirement(s) that an issuer has failed to meet, Nasdaq

believes that investors will be able to make a more informed decision regarding their investment (or potential investment) in an issuer's securities. Furthermore, Nasdaq proposes that an issuer be required to make the public announcement as promptly as possible, but not more than seven calendar days following the receipt of the Staff Determination. Nasdaq believes that this time frame will provide an issuer with a sufficient opportunity to prepare a public announcement while also ensuring that investors receive the information in a timely manner. If an issuer fails to disclose the receipt of a Staff Determination, trading of its securities will be halted until the disclosure is made, even if the issuer appeals the determination to the Listing Qualifications Panel, as provided for under Marketplace Rule 4820. If an issuer fails to make the public announcement by the time that the Listing Qualifications Panel issues its decision, that decision will also determine whether to delist an issuer's securities for failure to make the public announcement.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,³ in that the proposal is designed to protect investors and the public interest. As noted above, the proposed rule change is aimed at ensuring that investors are notified that Nasdaq has determined to delist an issuer's securities for non-compliance with the continued listing requirements.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and

³ 15 U.S.C. 78o-3(b)(6).

publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

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, 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 filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-00-48 and should be submitted by October 26, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43367; File No. SR-NASD-00-42]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Proposed Recording and Recordkeeping Requirements of Certain Quotation Data

September 27, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,²

notice is hereby given that on June 3, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. 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

NASD Regulation is proposing to add new NASD Rule 6630 to require members to record and maintain their quotations displayed in certain automated, inter-dealer quotation systems, such as the Electronic Pink Sheets ("EPS"), and to report such data to NASD Regulation upon request.

Below is the text of the proposed rule change. Additions are italicized; deletions are in brackets.

* * * * *

6600. [REPORTING TRANSACTIONS IN] OVER-THE-COUNTER EQUITY SECURITIES

This Rule 660 Series sets forth *recording and reporting requirements for certain quotations and unpriced indications of interest displayed on inter-dealer quotation systems* and the trade reporting requirements applicable to members' transactions in equity securities for which real-time trade reporting is not otherwise required (hereinafter referred to as "OTC Equity Securities"). Members shall utilize the Automated Confirmation Transaction Service (ACT) for trade reporting in OTC Equity Securities. Rules 6610 and 6620 No Change.

Rule 6630. Recording of Quotation Information

(a) Quotation Recording Requirements

(1) *Subject to the terms and conditions contained herein, each OTC Market Maker that displays priced quotations (bid and/or offer) or unpriced indications of interest in OTC Equity Securities in an inter-dealer quotation system that permits quotation updates on a real-time basis shall record each item of information described in paragraph (b) of this Rule. This quote activity record must reflect all changes in an OTC Market Maker's priced quotation or quotation size displayed or unpriced indication of interest, and the time any such change was effected.*

(2) *Members shall record each item of information required to be recorded under this Rule in such form as is prescribed by the Association from time to time.*

(3) Maintaining and Preserving Records

(A) *Each member shall maintain and preserve records of the information required to be recorded under this Rule for the period of time and accessibility specified in SEC Rule 17a-4(a).*

(B) *The records required to be maintained and preserved under this Rule may be immediately produced or reproduced on "micrographic media" as defined in SEC Rule 17a-4(f)(1)(i) or by means of "electronic storage media" as defined in SEC Rule 17a-4(f)(1)(ii) that meet the conditions set forth in SEC Rule 17a-4(f) and may be maintained and preserved for the required time in that form.*

(b) Information to be Recorded

The quotation activity record required pursuant to paragraph (a) of this Rule shall contain, at a minimum, the following information for every priced quotation (bid and/or offer) or unpriced indication of interest displayed by the member during the trading day:

- (1) *Submitting firm;*
- (2) *Inter-dealer quotation system or medium;*
- (3) *Trade date;*
- (4) *Time quotation displayed (expressed in hours, minutes and seconds);*
- (5) *Security name and symbol;*
- (6) *Bid and bid quotation size (if applicable);*
- (7) *Offer and offer quotation size (if applicable);*
- (8) *Prevailing Inside Bid; and*
- (9) *Prevailing Inside Offer*

If no updates were entered to an OTC Market Maker's quotation or quotation size for any given trading day, the member must record the information in subparagraphs (b)(1) through (7).

(c) Quotations Not Required To Be Recorded

The recording requirements contained in paragraphs (a) and (b) of this Rule shall not apply to quotations of OTC Equity Securities that are displayed on an inter-dealer quotation system that is:

- (1) *qualified pursuant to Section 17B of the Act; or*
- (2) *operated by a member of the Association.*

(d) Reporting Requirements

(1) General Requirement

Members shall report information required to be recorded under this Rule to the Association upon its request.

⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.