

regulations thereunder.⁹ Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules be 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.¹⁰ In particular, the Commission finds that the proposed rule change will further investor protection by making information provided in advertisements of municipal fund securities more up-to-date and more comparable among different municipal fund securities investments and between municipal fund securities and registered mutual funds.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-MSRB-2005-09) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52294; File No. SR-NASD-2004-025]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change To Amend NASD's Minor Rule Violation Plan

August 18, 2005.

On February 10, 2004, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its minor rule violation plan ("MRVP"). On March 17, 2005, NASD filed Amendment No. 1 to the proposed rule

change. On June 27, 2005, NASD filed Amendment No. 2 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on July 14, 2005.³ The Commission received two comments on the proposal.⁴ This order approves the proposed rule change, as amended.

NASD proposed to make the following changes to its MRVP:

- Combine in one entry all rule violations eligible for disposition under the MRVP that relate to transaction reporting and audit trail requirements in equity and debt securities. Specifically, NASD proposes to eliminate the separate minor rule violation pertaining to NASD Rules 6130 and NASD 6170 (transaction reporting to the Automated Confirmation Transaction Service) and add them to a consolidated entry; add to the MRVP, and this consolidated entry, violations of NASD Rules 4632A, 5430, 6130A, and 6170A, which relate to TRACS requirements; and eliminate the reference in the MRVP to a violation of the Fixed Income Pricing System, NASD Rule 6240, and replace it with a violation of NASD Rule 6230, the TRACE transaction reporting rule.

- Include in the MRVP violations of standards applicable to member communications with the public (NASD Rules 2210, 2211, and 2220, and related Interpretive Materials) which would allow NASD to address minor or technical violations of content-related advertising rules.

- Expand the MRVP to include a member's failure to identify to NASD and keep current information regarding any contact person that a member must provide to NASD under any current or future NASD rule.

- Change "the Association" to "NASD" in the minor rule violation provision relating to NASD Rule 3110 and change "ECN's" to "ECNs" in the minor rule violation provision relating to Rule 11Ac1-1(c)(5) under the Act.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁵ In particular, the

Commission believes that the proposal is consistent with Section 15A(b)(6) of the Act,⁶ which requires that the rules of an association be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 15A(b)(2) and 15A(b)(7) of the Act⁷ which require that the rules of an association enforce compliance and provide appropriate discipline for violations of Commission and association rules. In addition, because existing NASD Rule 9216(b) provides procedural rights to a person fined under the MRVP to contest the fine and permits a hearing on the matter, the Commission believes the MRVP, as amended by this proposal, provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 15A(b)(8) and 15A(h)(1) of the Act.⁸

Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,⁹ which governs minor rule violation plans. The Commission believes that the change to its MRVP will strengthen NASD's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposal, the Commission in no way minimizes the importance of compliance with NASD rules and all other rules subject to the imposition of fines under NASD's MRVP. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, an MRVP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that NASD will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of

proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78o-3(b)(6).

⁷ 15 U.S.C. 78o-3(b)(2) and 78o-3(b)(7).

⁸ 15 U.S.C. 78o-3(b)(8) and 78o-3(h)(1).

⁹ 17 CFR 240.19d-1(c)(2).

⁹ 15 U.S.C. 78o-4(b)(2)(C).

¹⁰ *Id.*

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 51994 (July 7, 2005), 70 FR 40764.

⁴ See e-mails to rule-comments@sec.gov from Scott Lynn Fagin, Chief Compliance Officer and Chief Financial Officer, The Jeffrey Matthews Financial Group, LLC, dated August 5, 2005; and Joseph W. Mays, Jr., President, Securities Consulting Group, Inc., dated August 1, 2005. The comments are not germane to the proposal and thus do not raise any issue that would preclude approval of this proposal.

⁵ In approving this proposed rule change, the Commission notes that it has considered the

more or less than the recommended amount is appropriate for a violation under the MRVP or whether a violation requires formal disciplinary action.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act¹⁰ and Rule 19d-1(c)(2) under the Act,¹¹ that the proposed rule change (SR-NASD-2004-025), as amended, be, and hereby is, approved and declared effective.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52291; File No. SR-NASD-2005-011]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto To Limit the Eligibility for Quotation on the OTCBB of the Securities of an Issuer That Is Repeatedly Delinquent in Its Periodic Reporting Obligations

August 18, 2005.

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 January 28, 2005, the National Association of Securities Dealers, Inc. ("NASD"), through its 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. Nasdaq submitted Amendment No. 1 to this filing on May 10, 2005.³ Nasdaq submitted Amendment No. 2 to this filing on June 24, 2005.⁴ Nasdaq

submitted Amendment No. 3 to this filing on August 15, 2005.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Nasdaq proposes to limit the eligibility for quotation on the Over-the-Counter Bulletin Board ("OTCBB") of the securities of an issuer that is repeatedly late in filing required periodic reports. Nasdaq proposes to implement the proposed rule in connection with filings for reporting periods ending on or after October 1, 2005.⁶

The text of the proposed rule change, as amended, is set forth below. Proposed new language is in *italics*, deletions are in [brackets].

* * * * *

6530. OTCBB-Eligible Securities

A member shall be permitted to quote the following categories of securities in the Service:

(a) any domestic equity security that satisfies the requirements of subparagraph (1) and either subparagraph (2) or (3) or (4) below:

(1)-(3) No change.

(4) the issuer of the security is a bank or savings association (*or a holding company for such an entity*) that is not required to file reports with the Commission pursuant to Section 13 or 15(d) of the Act and, subject to a sixty calendar day grace period, the issuer of the security is current with all required filings with its appropriate Federal

for reporting periods ending before June 1, 2005 will not be considered under the proposed rule change.

⁵ Amendment No. 3, which supplemented the filing as modified by Amendment No. 2, amended the proposed rule text to provide that filings for reporting periods ending before October 1, 2005 will not be considered under the proposed rule change.

⁶ The Commission notes that the NASD has submitted a proposed rule change (SR-NASD-2005-089), which was published for public comment in the **Federal Register** on July 29, 2005, that would amend the NASD's Plan of Allocation and Delegation of Functions by the NASD to Subsidiaries ("Delegation Plan") and amend several NASD rules with respect to the OTCBB. Currently, the Delegation Plan allocates responsibility for activities related to or in support of the trading in over-the-counter ("OTC") equity securities, including the OTCBB, to Nasdaq. Under the NASD's proposal, the NASD would assume direct authority for OTC equity securities, rather than delegate it to Nasdaq. Nasdaq would, however, continue to provide certain operational systems and support to the OTCBB pursuant to contract. See Securities Exchange Act No. 52119 (July 25, 2005), 70 FR 43918 (July 29, 2005) (public notice of File No. SR-NASD-2005-089).

banking agency or State bank supervisor (as defined in 12 U.S.C. 1813).

(b)-(d) No change.

(e) [Paragraphs (a)(2) and (3) and (4) above will not apply with respect to any domestic equity security quoted in the Service on the effective date of this rule change until six months after that date.] *Notwithstanding the foregoing paragraphs, a member shall not be permitted to quote a security if:*

(1) *while quoted on the OTCBB, the issuer of the security has failed to file a complete required annual or quarterly report by the due date for such report (including, if applicable, any extensions permitted by SEC Rule 12b-25) three times in the prior two-year period; or*

(2) *the security has been removed from the OTCBB due to the issuer's failure to satisfy paragraph (a)(2), (3) or (4), above, two times in the prior two-year period.*

Following the removal of an issuer's securities pursuant to this paragraph (e), such securities shall not be eligible for quotation until the issuer has timely filed in a complete form all required annual and quarterly reports due in a one-year period. For purposes of this paragraph, a report filed within any applicable extensions permitted by SEC Rule 12b-25 will be considered timely filed. Furthermore, filings for reporting periods ending before October 1, 2005 will not be considered for purposes of this paragraph (e).

* * * * *

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

In January of 1999, the Commission approved amendments to NASD Rules 6530 and 6540 requiring all issuers of securities quoted on the OTCBB to be current in their filings with the Commission or other appropriate

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 240.19d-1(c)(2).

¹² 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(44).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1, which replaced the original filing in its entirety, clarified the proposed rule text in response to comments received from the Commission staff, clarified how Nasdaq will notify issuers about the proposed rule, and stated that the proposed rule would be implemented for those filings for periods ending on or after June 1, 2005.

⁴ Amendment No. 2, which replaced the original filing and Amendment No. 1 in their entirety, further clarified the proposed rule text in response to comments received from the Commission staff, and set forth in the proposed rule text that filings