

becomes necessary to remove a stock from the Index, it will be replaced by the stock in the DJIA which has the highest yield of the stocks not already in the Index.<sup>4</sup> CBOE intended for this passage to describe the actions it would take if the shares of an Index component became unavailable for trading, either due to a corporate action such as a takeover or merger, or due to bankruptcy. However, CBOE made no distinction between this type of component change and a discretionary component change in the Dow Jones Industrial Average, in which the shares of a company removed from the DJIA continue to trade.<sup>5</sup>

CBOE, therefore, proposes to clarify its maintenance procedures under which component changes can be made to the Index. Specifically, if it becomes necessary to remove a stock from the Index in the event that its shares cease to trade and a proxy for those shares is not available, it will be replaced by the stock in the DJIA that has the highest yield of the stocks not already in the Index. If a stock is removed from the DJIA at the discretion of Dow Jones, but its shares continue to trade, that stock will remain in the Index until the time of the annual re-balancing.

### III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act.<sup>6</sup> In particular, the Commission finds the proposal is consistent with Section 6(b)(5)<sup>7</sup> of the Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest.

The Commission believes that the proposal is consistent with the Act because it helps protect investors. In the proposal, CBOE sets forth its procedures

for maintaining the Index when the Dow Jones corporation decides to replace a stock in the Dow Jones Industrial Average. CBOE's procedures will now be consistent with industry practice for maintaining the Index, which should help protect investors by eliminating potential confusion about the composition of the Index. Further, this clarification helps protect investors because it gives investors advance notice about the treatment of the Index and, therefore, allows them to make an informed investment decision.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-CBOE-99-60) 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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42761; File No. SR-NASD-00-24]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Disclosure Requirements for Transactions Involving Callable Common Stock and Amendment Nos. 1 and 2 Thereto

May 5, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 25, 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. On May 1, 2000 and May 3, 2000, the Exchange submitted Amendment Nos. 1 and 2, respectively, to the proposed rule change.<sup>3</sup>

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> In Amendment Nos. 1 and 2, the Exchange reworded the proposed language in the

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 interpret NASD Rule 2110, Standards of Commercial Honor and Principles of Trade, to require a member that provides a written confirmation for a transaction involving callable common stock to disclose on the written confirmation that the security is callable and that the customer may wish to contact the member for more information. Below is the text of the proposed rule change. Proposed new language is italicized.

#### IM-2110-6. Confirmation of Callable Common Stock

*Any member providing a customer confirmation pursuant to SEC Rule 10b-10 in connection with any transaction in callable common stock shall disclose on such confirmation that:*

- *The security is callable common stock; and*
- *A customer may contact the member for more information concerning the security.*

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

In its filing with the Commission, NASD Regulation 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. NASD Regulation 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

An issuer's common stock generally continues to trade on a market until the issuer fails to meet the market's listing requirements, combines with another

interpretation for clarity. No substantive changes were made in the amendments. See Letters from Gary L. Goldsholle, Assistant General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), SEC, dated April 28, 2000 ("Amendment No. 1") and May 2, 2000 ("Amendment No. 2").

<sup>4</sup> See Securities Exchange Act Release No. 39453 (December 16, 1997), 62 FR 67101 (December 23, 1997) (order approving SR-CBOE-97-63).

<sup>5</sup> On November 1, 1999, Dow Jones removed four stocks from the DJIA and replaced these stocks with new ones. These four stocks also happened to be components of the Index, i.e., four of the highest yielding stocks in the DJIA. Before this component change in the DJIA, CBOE realized that, contrary to industry practice, its maintenance rules for the index required it to remove the four stocks from the Index. To prevent these four stocks from being removed from the Index until the annual rebalancing of the Index, CBOE submitted a rule change under Section 19(b)(3)(A) of the Act. See Securities Exchange Act Release No. 42187 (November 30, 1999), 64 FR 68708 (December 8, 1999).

<sup>6</sup> In addition, pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

company, or voluntarily delists for another market. Occasionally, common stock will be callable, that is, subject to being called away from a shareholder, either by the issuer or a third party. Typically, the price at which callable common stock is called away from a shareholder is at a premium to the then prevailing market price or pursuant to a schedule of prices announced at the time the common stock is issued.<sup>4</sup>

An investor purchasing callable common stock is subject to unique risks not typically associated with ownership of common stock, even where such stock is called away at a premium. Moreover, the ability of an issuer's common stock to be called away from a shareholder generally will be a material fact to an investor. Accordingly, NASD Regulation believes that high standards of commercial honor and just and equitable principles of trade require that any member that provides a written confirmation for a transaction involving callable common stock must disclose on the confirmation that the security is callable and that the customer may contact the member for more information. NASD Regulation emphasizes that the disclosure of the call feature on the confirmation in no way relieves a member of its obligation to consider the callable nature of the security when complying with any applicable suitability obligations.

## 2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>5</sup> which requires, among other things, that the Association's rules 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. NASD Regulation believes that callable common stock is subject to unique and material risks not typically associated with ownership of common stock; therefore, any member that provides a written confirmation for a transaction involving callable common stock must disclose that the security is callable and that the customer may contact the member for more information.

<sup>4</sup> Because callable common stock combines the features of more than one category of securities (*i.e.*, common stock and a call option), the staff of The Nasdaq Stock Market will evaluate whether callable common stock is eligible for inclusion in the Nasdaq National Market pursuant to the "other securities" provisions of NASD Rule 4420(f).

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

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

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate.

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

NASD Regulation has neither solicited nor received written comments.

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

The proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule and, therefore, has become effective upon filing pursuant to section 19(b)(3)(A)(i) of the Act<sup>6</sup> and paragraph (f)(1) of Rule 19b-4 thereunder.<sup>7</sup>

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## 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. 20549-0609. 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 SR-NASD-00-24 and should be submitted by June 1, 2000.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>7</sup> 17 C.F.R. 240.19b-4(f)(1).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42760; File No. SR-NASD-99-26]

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Denial of Access Procedures

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 27, 1999, 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 ("Commission") the proposed rule change. The Association submitted Amendment No. 1 to its proposal on August 24, 1999.<sup>3</sup> The proposed rule change, as amended, is 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.<sup>4</sup>

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

NASD Regulation is proposing to amend the NASD Rule 9510 Series of the National Association of Securities Dealers, Inc. ("NASD" or "Association") to: (i) Expand the circumstances under which an aggrieved Party may request a hearing to challenge an Association action that the Party believes constitutes a "denial of access;" (ii) expand the pool of potential hearing panelists in

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> In Amendment No. 1, the NASD clarified: (1) Operational distinctions between the NASD Regulation and the NASD; (2) what initiates a proceeding; and (3) other technical matters. See Restated 19b-4 filing marked Amendment No. 1 ("Amendment No. 1").

<sup>4</sup> Technical and clarifying changes to the notice were made pursuant to a telephone conversation between Eric Moss, Assistant General Counsel, Office of the General Counsel, NASD Regulation, and Katherine England, Assistant Director, Division of Market Regulation, Commission, on April 28, 2000.