

believes that the proposed rule change should help to ensure that all registered persons are kept up-to-date on regulatory, compliance, and sales practice-related industry issues. Further, the Commission believes that the proposed rule change will reinforce the importance of compliance with just and equitable principles of trade by exposing all registered industry participants to the full benefits of the Regulatory Element programs, which include a new Regulatory Element module that focuses specifically on ethics.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹² that the proposed rule change (SR-NASD-2004-098), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 04-22195 Filed 10-1-04; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50458; File No. SR-NASD-2004-109]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change To Increase the Initial Inclusion Requirements for Certain Foreign Securities Seeking To List on the Nasdaq SmallCap Market

September 28, 2004.

On July 15, 2004, 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"), 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 modify Rule 4320 to apply the same, heightened quantitative initial inclusion standards upon non-Canadian foreign issuers that currently apply to domestic and Canadian issuers seeking to list on the Nasdaq SmallCap Market ("SmallCap Market"). Specifically, Nasdaq has added to the initial inclusion requirements of Rule 4320 a minimum bid price requirement of \$4 and a market value requirement for publicly held shares of \$5,000,000.

The proposed rule change was published for comment in the **Federal Register** on August 18, 2004.³ The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁴ in general, and with Section 15A(b)(6) of the Act,⁵ in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Commission believes that applying the same quantitative initial inclusion standards upon non-Canadian foreign issuers seeking to list on the Nasdaq SmallCap market that currently apply to domestic and Canadian issuers is an appropriate change that raises the applicable standards and achieves consistent application of those standards among issuers.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁶ that the proposed rule change (File No. SR-NASD-2004-109) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. E4-2468 Filed 10-1-04; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50461; File No. SR-NFA-2004-01]

Self-Regulatory Organizations; National Futures Association; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Adopting Bylaw 1508 Regarding Security Futures Agreements

September 28, 2004

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-7 thereunder,² notice is hereby given that on

September 7, 2004, the National Futures Association ("NFA") 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 NFA. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. On September 3, 2004, the NFA filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC") for approval and invoked the "ten-day" provision of Section 21(j) of the Commodity Exchange Act³ ("CEA"). On September 17, 2004, the CFTC determined not to review the proposed rule change and permitted NFA to make the proposed rule change effective on September 17, 2004.⁴ On September 27, 2004, NFA filed Amendment No. 1 to the proposed rule change.⁵

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

NFA proposes to adopt NFA Bylaw 1508 regarding securities futures agreements. The text of the proposed rule change appears below. New language is in *italics*.

* * * * *

Bylaws

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Bylaw 1508. Security Futures Agreements.

Staff may, with the approval of the Executive Committee, enter into one or more agreements with one or more designated contract markets to provide regulatory services to NFA to assist NFA in discharging its obligations under Sections 15A(k) and 19(g) of the Securities Exchange Act of 1934. Any action taken by a designated contract market, or its employees or authorized agents, acting on behalf of NFA pursuant to a regulatory services agreement shall be deemed to be an action taken by NFA; provided, however, that nothing in this provision shall affect the oversight of the designated contract market by the Commodity Futures Trading

³ 7 U.S.C. 21(j).

⁴ See letter from Lawrence B. Patent, Deputy Director, Compliance and Registration Section, Division of Clearing and Intermediary Oversight, CFTC to Thomas W. Sexton, III, General Counsel, NFA, dated September 17, 2004.

⁵ See letter from Kathryn Page Camp, Associate General Counsel, NFA, to John C. Roeser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 27, 2004. Amendment No. 1 clarifies the proposal. Amendment No. 1 is incorporated into this notice.

¹² 15 U.S.C. 78s(b)(2).

¹³ 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 Release No. 50183 (August 11, 2004), 69 FR 51341 (August 18, 2004).

⁴ 15 U.S.C. 78o-3.

⁵ 15 U.S.C. 78o-3(b)(6).

⁶ 17 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(7).

² 17 CFR 240.19b-7.