

believes that it is reasonable and consistent with the Act for NASD and NYSE to require each member to review and update its BCPs and its emergency contact information in the manner and at the times specified in the new rules.

The Commission believes that the implementation timeframes proposed by NASD and NYSE are reasonable and consistent with the Act. In particular, the Commission believes that it is reasonable for NASD to grant its NASD-member introducing firms 30 days more than NASD-member clearing firms, as introducing firms may need to incorporate the business recovery strategies of their clearing firms into their own plans.

The Commission believes that it is reasonable for NASD to arrange with an outside vendor to serve as a repository for its members' BCPs. Use of this service would be voluntary and subject to a monthly fee payable by a member directly to the repository. The Commission believes that this service may be beneficial to members during emergency situations. Specifically, it will enable a member to get a copy of its BCP even if its offices are not accessible.

Pursuant to Section 19(b)(2) of the Act,<sup>52</sup> the Commission finds good cause for approving NASD Amendment Nos. 6, 7, and 8 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. These amendments make only minor revisions to the rule text that clarify the NASD proposal and do not alter its substance. In addition, the Commission believes that NASD's proposal should be approved, as amended by Amendments Nos. 6, 7, and 8, at the same time as the NYSE proposal to provide consistent regulation among NASD and NYSE members. Accordingly, the Commission believes that good cause exists to approve Amendment Nos. 6, 7, and 8 on an accelerated basis.

#### V. Solicitation of Comments on NASD Amendment Nos. 6, 7, and 8

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether NASD Amendment Nos. 6, 7, and 8 are 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. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No.

SR-NASD-2002-108. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 NASD. All submissions should refer to the File No. SR-NASD-2002-108 and should be submitted by May 4, 2004.

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>53</sup> that the proposed rule changes (SR-NASD-2002-108 and SR-NYSE-2002-35), as amended, are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>54</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49535; File No. SR-NASD-2004-018]

#### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Amend the Procedures for the Review of Nasdaq Listing Determinations

April 7, 2004.

On January 28, 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")<sup>1</sup> and Rule

19b-4<sup>2</sup> thereunder, a proposal to amend the procedures for the review of Nasdaq listing determinations. On February 20, 2004, Nasdaq submitted Amendment No. 1 to the proposal,<sup>3</sup> which replaced the original proposal in its entirety. On March 1, 2004, the Commission published the proposed rule change, as amended, in the **Federal Register**.<sup>4</sup> The Commission received no comments on the proposal. This order approves the amended proposal.

The Commission believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.<sup>5</sup> In particular, the Commission believes that the proposal is consistent with Section 15A(b)(6) of the Act<sup>6</sup> which requires, among other things, that the rules of an association be designed to promote just and equitable principles of trade and to protect investors and the public interest. NASD Rule 4830 provides that all hearings before the Nasdaq Listing Qualifications Panel be conducted by at least two persons designated by the Nasdaq board of directors. Nasdaq's practice is to conduct such hearings before panels composed of two members. Currently, NASD Rule 4830 does not make provision for a deadlock between the two members of the panel. Under new paragraph (d) of NASD Rule 4830, in the event of a deadlock, the issuer would be afforded the opportunity for a new hearing before a new Listing Qualifications Panel comprised of three members. The issuer and Nasdaq staff would be afforded the opportunity to supplement the record on review, including any information that was not available at the time of the first hearing before the Listing Qualifications Panel. There would be no fee for the second hearing.

Among other things, the rule change also: (1) Allows the Listing Qualifications Panel or the Nasdaq Listing Council to reconsider its decision, but only if there were a mistake of material fact in the decision; (2) clarifies when the Nasdaq Listing Council may assert jurisdiction over a decision or permit the Listing Qualifications Panel to proceed with the

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

<sup>3</sup> See letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Division of Market Regulation, Commission, dated February 20, 2004 ("Amendment No. 1").

<sup>4</sup> See Securities Exchange Act Release No. 49306 (February 23, 2004), 69 FR 9662 (March 1, 2004).

<sup>5</sup> In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>53</sup> *Id.*

<sup>54</sup> 17 CFR 200.30-3(a)(12).

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

<sup>52</sup> 15 U.S.C. 78s(b)(2).

reconsideration; and (3) allows documents required by the NASD Rule 4800 process to be delivered by e-mail, if the issuer consents to such method of delivery.

The Commission believes that these proposals will improve the efficiency and fairness of the process by which Nasdaq makes listing determinations and, therefore, are reasonable and consistent with the Act.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR–NASD–2004–018), as amended, is approved.

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. 34–49515; File No. SR–NYSE–2004–17]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to the Listing of Income Deposit Securities (Sections 102.01C, 202.05 and 802.01B of the Listed Company Manual)

April 1, 2004.

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 March 17, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On March 29, 2004, the Exchange amended the proposed rule change.<sup>3</sup> The Exchange filed the proposed rule change

pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b–4(f)(6) thereunder,<sup>5</sup> which renders the proposal effective upon filing.<sup>6</sup> 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 Substance of the Proposed Rule Change

The Exchange is proposing to amend the Listed Company Manual ("LCM") Sections 102.01C, 202.05 and 802.01B to clarify that income deposit securities intended to be traded as a unit will, as a general matter, be listed if each of the component parts of the unit meets the applicable requirements for listing.

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

In its filing with the Commission, the NYSE 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. The Exchange 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 Exchange is considering the listing of units comprised of common stock and a debt security, sometimes referred to as income deposit securities ("IDS"). In contrast to a typical unit, an IDS unit can be expected to trade as a unit for an extended period of time, although holders can have certain rights to separate the IDS unit into its component parts (or to combine the components into an IDS).

In order to provide clarity and transparency with respect to the listing standards applicable to IDS units, the Exchange is proposing to amend LCM Section 102.01C to clarify that each component of a unit must meet the applicable listing standards. A comparable amendment is proposed to

LCM Section 802.01B with respect to applicable continued listing standards.

Additionally, the Exchange is proposing an addition to LCM Section 202.05 to specify publication requirements regarding any change in the terms of a listed unit, such as changes to the terms and conditions of any of the components or to the ratio of the components within the unit, and to specify that the issuer must provide current information in this regard on its website, or if it does not maintain a website, in its annual report to unit holders. Changes that should be publicized would include those resulting from a stock split or an automatic exchange of one or more components of the unit (e.g., as a result of a secondary offering of units). The issuer would be expected to provide public disclosure as soon as practicable regarding the nature and effective date of the change. For example, changes resulting from a stock split should be subject to prior disclosure, while changes with respect to original issue discount should be disclosed as soon as such information is available. Disclosure of this nature is appropriate to ensure that sufficient information regarding the attributes of IDS units is publicly available and readily accessible on a timely basis.<sup>7</sup>

###### 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and Section 6(b)(5) of the Act,<sup>9</sup> in particular, in that it will promote just and equitable principles of trade; facilitate transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system; and protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose 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 on the proposed rule change were neither solicited nor received.

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<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> See Letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated March 26, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange made certain changes to Section 7 of the form 19b–4 and Section III of Exhibit 1 of the proposed rule change and confirmed that the original and continuing equity distribution standards set out in the Listed Company Manual Sections 102.01A and 802.01A will be applied to units listed as income deposit securities.

<sup>4</sup> 15 U.S.C. 78s(b)(1).

<sup>5</sup> 17 CFR 240.19b–4.

<sup>6</sup> The NYSE asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. See Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

<sup>7</sup> The Commission notes that Amendment No. 1 also set forth the standards applicable to the units as a whole. See *supra* at footnote 3.

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).