

(h) of Rule 10332, Schedule of Fees in Customer Disputes, which relate solely to Rule 10334, and renumber Rules 10205 and 10332 accordingly.

## 2. Statutory Basis

NASD Dispute Resolution believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>4</sup> which requires, among other things, that the Association's rules must 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 Dispute Resolution believes that accelerating the expiration date of Rule 10334 will serve the public interest by eliminating an unnecessary, redundant Code provision that confuses parties and results in needless expenditure of NASD Dispute Resolution resources.

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

NASD Dispute Resolution 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, as amended.

## 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

The proposed rule change has been filed by the Association as a "non-controversial" rule change under Rule 19b-4(f)(6) under the Act.<sup>5</sup> Consequently, because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative until December 31, 2000, more than 30 days from November 3, 2000, the date on which it was filed, and the NASD provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. 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, 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-00-65 and should be submitted December 8, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43536; File No. SR-NASD-00-48]

## Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Requiring Public Disclosure of Receipt of a Delisting Notice

November 9, 2000.

## I. Introduction

On August 10, 2000, the National Association of Securities Dealers Inc. ("NASD" or "Association"), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC"),

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> a proposed rule change that would require an issuer to publicly disclose the receipt of a delisting notice for failure to comply with Nasdaq's continued listing requirements. Notice of the proposed rule change appeared in the **Federal Register** on October 5, 2000.<sup>3</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

## II. Description of the Proposal

Nasdaq proposes to amend Rule 4815(b) and IM 4120-2, "Disclosure of Written Notice of Staff Determination," to require an issuer to make a public announcement through the news media disclosing the receipt of a written staff determination to prohibit continued listing requirements ("Staff Determination") and the rule(s) upon which the Staff Determination was based. The proposal also requires the public announcement to be made as promptly as possible, but not more than seven calendar days following the receipt of the Staff Determination. Additionally, the proposal provides that 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 Listings Qualification Panel issues its decision, that decision will also determine whether to delist the issuer's securities for failure to make the public announcement.

According to Nasdaq, the proposed rule change is designed to require a Nasdaq issuer to publicly disclose the receipt of a written delisting notice for failure to comply with the continued listing requirements. 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. In this regard, Nasdaq proposes that the public announcement shall not only disclose the receipt of a Staff Determination, but shall also indicate the Marketplace Rule(s) upon which it was based.

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

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

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

<sup>3</sup> See Securities Exchange Act Release No. 43383 (September 28, 2000), 65 FR 59480.

<sup>4</sup> 15 U.S.C. 78o(b)(6).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> 17 CFR 200.30-3(a)(12).

Determination. Nasdaq believes this time frame will provide an issuer with a sufficient opportunity to prepare a public announcement while also ensuring that investors receive 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 to the Listings Qualifications Panel, as provided for under Marketplace Rule 4820. If an issuer fails to make the public announcement by the time the Listing Qualification Panel issues its decision, that decision will also determine whether to delist an issuer's securities for failure to make the public announcement.

### III. Discussion

The Commission finds the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder.<sup>4</sup> Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 15A(b)(6)<sup>5</sup> of the Act. Section 15A(b)(6)<sup>6</sup> requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, protect investors and the public interest.

Specifically, the Commission finds that the proposal to amend NASD Rule 4815 to require that an issuer make a public announcement through the news media to disclose the receipt of a Staff Determination to prohibit continued listing of the issuer's securities as a result of the issuer's failure to comply with the continued listing requirements is consistent with Section 15A(b)(6)<sup>7</sup> because it will provide notice to investors that Nasdaq has determined to delist an issuer's securities for non-compliance with Nasdaq's continued listing requirements, and the Rules upon which the Staff Determination was based. Such information should serve to protect present and future investors in an issuer's securities by providing them

with this information as promptly as possible, and not more than seven calendar days following the receipt of a Staff Determination for failure to comply with continued listing requirements. Nasdaq believes, and the Commission agrees, that requiring public announcement of this information as promptly as possible, but not more than seven calendar days from receipt of the Staff Determination, allows a reasonable timeframe for the issuer to prepare an announcement, while ensuring that investors receive the information in a timely manner. The Commission believes that investors should have the benefit of knowing that an issuer has failed to meet Nasdaq's continued listing requirements and the Rules upon which the Staff Determination is based, and therefore finds the provision that trading of an issuer's securities, if an issuer fails to disclose receipt of a Staff Determination, will be halted until the disclosure is made, even if the issuer appeals to the Listing Qualifications Panel, to be reasonable and consistent with the Act. Finally, the Commission believes that the proposal should benefit investors because it will ensure that all Nasdaq issuers publicly disclose the receipt of a Staff Determination in both a timely and uniform manner, as opposed to the current situation whereby some issuers voluntarily make the disclosure while others do not.

### IV. Conclusion

For the above reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, in general, and with Section 15A(b)(6),<sup>8</sup> in particular.

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-NASD-00-48), be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43549; File No. SR-NASD-00-50]

### Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Definition of "Public Offering" for Purposes of Nasdaq's Shareholder Approval Rules

November 13, 2000.

On August 11, 2000, The National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> a proposed rule change regarding the adoption of interpretive material defining "Public Offering" for purposes of Nasdaq's shareholder approval rules.<sup>2</sup> On October 4, 2000, the Nasdaq filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change was noticed in the **Federal Register**.<sup>4</sup> On October 13, 2000, the NASD filed Amendment No. 2 to the proposed rule change.<sup>5</sup> No comments were submitted on the proposed rule change. This order approves the proposed rule change, as amended.

### I. Background

Nasdaq rules require shareholder approval for stock issuances of 20 percent or more of an issuer's total shares outstanding, offered at less than the greater of book or market value. The applicable rules further provide, however, that shareholder approval is not required for a "public offering," although that term is not defined in the rules. Recently, a number of issuers have inquired as to whether certain large, below-market offerings were

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

<sup>2</sup> The American Stock Exchange, Inc. filed a similar proposed rule change SR-Amex-00-46. See Securities Exchange Act Release No. 43419 (Oct. 6, 2000), 65 FR 61206 (Oct. 16, 2000).

<sup>3</sup> Amendment No. 1 changed the section under which the proposed rule change was filed from Section 19(b)(3) to Section 19(b)(2) of the Act and made other technical changes. See Letter from Edward Knight, Executive Vice President and Chief Legal Officer, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), SEC (Oct. 2, 2000).

<sup>4</sup> Securities Exchange Act Release No. 43420 (Oct. 6, 2000), 65 FR 61011 (Oct. 13, 2000).

<sup>5</sup> Amendment No. 2 made a minor technical change to the interpretation. See Letter from Arnold P. Golub, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division, SEC (Oct. 11, 2000). Because the amendment is technical, it does not need to be published for comment.

<sup>4</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

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

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).