

number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at <http://www.ficc.com/gov/gov.docs.jsp?NS-query>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FICC-2004-11 and should be submitted on or before October 22, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50456; File No. SR-NASD-2004-098]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to Proposed Amendments to Eliminate Exemptions From the Continuing Education Regulatory Element Requirements

September 27, 2004.

On June 25, 2004, the National Association of Securities Dealers ("NASD") filed with the Securities and Exchange Commission ("Commission")

or "SEC") a proposed rule change, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and rule 19b-4 thereunder,² to eliminate all currently effective exemptions from the requirement to complete the Regulatory Element of the Continuing Education ("CE") Program. On July 23, 2004, NASD submitted Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended, was published for comment in the **Federal Register** on August 23, 2004.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

NASD Rule 1120(a) currently provides, in part, that no member shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the Regulatory Element of the CE requirement set forth in this Rule.⁵ The Regulatory Element component of NASD Rule 1120(a)(1) requires each registered person to complete a standardized, computer-based, interactive CE program within 120 days of their second registration anniversary date and every three years thereafter, or as otherwise prescribed by NASD. Registered persons who fail to complete the Regulatory Element are deemed inactive and may not perform in any capacity or be compensated in any way requiring registration.

Currently, two classes of persons are exempt from Regulatory Element requirements under NASD Rule 1120(a). The first class of persons come within the "grandfathered" exemption which applies to persons who were continuously registered, without serious disciplinary action,⁶ for more than ten years as of the Rule's effective date (*i.e.*, July 1, 1995). The second class of persons come within the "graduated" exemption, which, although discontinued as of July 1998, continues to apply to registered persons who were

"graduated" prior to the discontinuation of the exemption.⁷

However, in response to recommendations made by the Securities Industry/Regulatory Council on Continuing Education (the "Council"), NASD submitted a proposed rule change to eliminate all currently effective exemptions from required participation in Regulatory Element programs.⁸ The Council believes that there is great value in exposing all registered industry participants to the full benefit of Regulatory Element programs.

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. Proposed amendments are expected to become effective (1) not more than 30 days following publication of the Notice to Members announcing Commission approval, (2) not more than 30 days following the implementation of necessary changes to Web Central Registration Depository ("Web CRD"), or (3) April 4, 2005, whichever date is latest to occur.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of section 15A of the Act,⁹ and the rules and regulations thereunder applicable to a national securities association.¹⁰ In particular, the Commission finds that the proposed rule change is consistent with section 15A(b)(6) of the Act,¹¹ 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. The Commission

⁷ When NASD Rule 1120 was first adopted in 1995, the Regulatory Element schedule required registered persons to satisfy the Regulatory Element on the second, fifth, and tenth anniversary of their initial securities registration. After satisfying the tenth anniversary requirement, a person was "graduated" from the Regulatory Element. A graduated principal re-entered the Regulatory Element if he or she incurred a significant disciplinary action. A graduated person who was not a principal re-entered if he or she acquired a principal registration or incurred a significant disciplinary action.

⁸ The Council recommended at its December 2003 meeting that SRO Rules (*e.g.*, NASD Rule 1120(a)), be amended to eliminate existing exemptions from the Regulatory Element and to require all "grandfathered" and "graduated" persons to fully participate in future standardized CE programs, according to the Rule's prescribed schedule.

⁹ 15 U.S.C. 78o-3.

¹⁰ In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78o-3(b)(6).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Grace Yeh, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated July 22, 2004 ("Amendment No. 1"). In Amendment No. 1, NASD replaced in its entirety the original rule filing.

⁴ See Securities Exchange Act Release No. 50204 (August 16, 2004), 69 FR 51873 (August 23, 2004).

⁵ See NASD Rule 1120(a)(1).

⁶ For purposes of NASD Rule 1120, a significant disciplinary action generally means a statutory disqualification as defined in section 3(a)(39) of the Act; a suspension or imposition of a fine of \$5,000 or more; or being subject to an order from a securities regulator to re-enter the Regulatory Element. See Rule 1120(a)(3).

¹⁰ 17 CFR 200.30-3(a)(12).

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]

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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]

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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.