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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–9351 Filed 4–23–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49581; File No. SR–NASD–2003–159]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. To Permit Nasdaq To Append a New Modifier to Trade Reports of Pre-Open and After-Hours Trades Not Submitted to Nasdaq's Automated Confirmation Transaction Service, and Other Changes Regarding Trade Reporting

April 19, 2004.

On October 16, 2003, 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 permit Nasdaq to append a new modifier to trade reports of pre-open and after-hours trades not submitted to Nasdaq's Automated Confirmation Transaction Service (''ACT'') within 90 seconds after execution, and to require members to: (1) Include the time of execution on all reports submitted to ACT; (2) append the .W modifier to reports of ''stop stock transactions;'' (3) append the .W modifier, as appropriate, to reports submitted to ACT after 5:15 p.m.;[3] and (4) append the .PRP modifier to reports of transactions in listed securities that are executed at a price that is based on a prior point in time. On February 5, 2004, Nasdaq amended the proposed rule change.[4] The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on March 17, 2004.[5] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,[6] the requirements of section 15A of the Act,[7] in general, and section 15A(b)(6) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to protect investors and the public interest. The Commission believes the proposed rule change will improve the quality of information disseminated by Nasdaq about the prices at which stocks are trading in its market.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NASD–2003–159), as amended, be, and it hereby is, approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–9423 Filed 4–23–04; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3571]

State of Tennessee

Davidson County and the contiguous counties of Cheatham, Robertson, Rutherford, Sumner, Williamson and Wilson in the State of Tennessee constitute a disaster area due to damages caused by a five alarm fire to the Old Hickory Village Shopping Center on March 28, 2004. Applications for loans for physical damage may be filed until the close of business on June 14, 2004, and for economic injury until the close of business on January 18, 2005, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

For Physical Damage:

Homeowners with credit available elsewhere: 6.125%.

Homeowners without credit available elsewhere: 3.125%.

Businesses with credit available elsewhere: 5.800%.

Businesses and non-profit organizations without credit available elsewhere: 2.900%.

Others (including non-profit organizations) with credit available elsewhere: 4.875%.

For Economic Injury:

Businesses and small agricultural cooperatives without credit available elsewhere: 2.900%.

The number assigned to this disaster for physical damage is 357105 and for economic damage is 9Z9900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: April 15, 2004.

Hector V. Barreto,

Administrator.

[FR Doc. E4–920 Filed 4–23–04; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 04–1(9)]

Howard on behalf of Wolff v. Barnhart; Applicability of the Statutory Requirement for Pediatrician Review in Childhood Disability Cases to the Hearings and Appeals Levels of the Administrative Review Process—Title XVI of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 04–1(9).

EFFECTIVE DATE: April 26, 2004.

FOR FURTHER INFORMATION CONTACT: Wanda D. Mason, Office of Acquiescence and Litigation Coordination, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–5044, or TTY (800) 966–5609.

SUPPLEMENTARY INFORMATION: We are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 402.35(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Nasdaq also is proposing to clarify that members must append the .W modifier to a trade report if a trade can be properly reported with both a .T modifier and a .W modifier. This clarification is necessary because ACT can accept only one modifier per trade report. *See infra* note 14.

[4] *See* February 4, 2004 letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission and attachments (''Amendment No. 1''). Amendment No. 1 completely replaced and superseded the original proposed rule change.

[5] *See* Securities Exchange Act Release No. 49404 (March 11, 2004), 69 FR 12727.

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78o–3.

[8] 15 U.S.C. 78o–3(b)(6).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals' decision as explained in this Social Security Acquiescence Ruling to decisions made at the Administrative Law Judge and Appeals Council levels of our administrative review process concerning the disability or continuing disability of individuals under age 18 under title XVI of the Act. If we made a decision about your disability between August 29, 2003, the date of the Court of Appeals' decision, and (*Insert Federal Register publication date*), the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to the prior decision. You must demonstrate, pursuant to 20 CFR 416.1485(b)(2), that application of the Ruling could change our prior decision in your case.

Additionally, when we received this precedential Court of Appeals' decision and determined that a Social Security Acquiescence Ruling might be required, we began to identify those claims that were pending before us within the circuit that might be subject to readjudication if an Acquiescence Ruling were subsequently issued. Because we have determined that an Acquiescence Ruling is required and are publishing this Social Security Acquiescence Ruling, we will send a notice to those individuals whose claims we have identified. The notice will provide information about the Acquiescence Ruling and how to request readjudication under the Ruling. It is not necessary for an individual to receive a notice in order to request application of this Social Security Acquiescence Ruling to the prior decision on his or her claim as provided in 20 CFR 416.1485(b)(2), discussed above.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the Federal Register to that effect as provided in 20 CFR 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided by 20 CFR 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance, Program No. 96.006— Supplemental Security Income.)

Dated: March 22, 2004.

Jo Anne B. Barnhart,

Commissioner of Social Security.

Acquiescence Ruling 04–1(9)

Howard on behalf of Wolff v. *Barnhart*, 341 F.3d 1006 (9th Cir. 2003)—Applicability of the Statutory Requirement for Pediatrician Review in Childhood Disability Cases to the Hearings and Appeals Levels of the Administrative Review Process—Title XVI of the Social Security Act.

Issue: Whether the provisions of section 1614(a)(3)(I) of the Social Security Act apply to Administrative Law Judge(ALJ) and Administrative Appeals Judge(AAJ) decisions.

Statute/Regulation/Ruling Citation: Sections 1614(a)(3)(C), 1614(a)(3)(I) and 1633(a) of the Social Security Act (42 U.S.C. 1382c(a)(3)(C), 1382c(a)(3)(I), and 1383b(a)); 20 CFR 416.903, 416.1400, 416.1401, 416.1402, 416.1407, 416.1015, 416.1016 and 416.1429.

Circuit: Ninth (Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, Washington).

Howard on behalf of Wolff v. *Barnhart*, 341 F.3d 1006 (9th Cir. 2003).

Applicability of Ruling: This Ruling applies only to the Administrative Law Judge (ALJ) and Appeals Council levels of the administrative review process in 20 CFR 416.1400.

Description of Case: Sherry Howard, the maternal aunt and legal guardian of Sarah Wolff, applied for Supplemental Security Income (SSI) payments based on disability on behalf of her niece, in 1996, when Sarah was 3 years old. Sarah was found disabled due to secondary borderline IQ and developmental delays under the version of the law in effect at that time.

Effective August 22, 1996, section 211 of Public Law 104-193, *The Personal Responsibility and Work Opportunity Act of 1996*, amended section 1614(a)(3)(C) of the Act, 42 U.S.C. 1382c(a)(3)(C) and established a new standard for determining SSI benefits for children under the age of 18.[1] Under the new law, certain children previously granted SSI benefits were required to have their eligibility for SSI payments redetermined in accordance with the provisions of the new law. Sarah's eligibility was redetermined under the new law and she was found ineligible for benefits effective in November 1997.

In 1999, an ALJ conducted a hearing. Prior to and again during the ALJ hearing, Ms. Howard requested that a medical expert specializing in pediatrics be called to testify regarding Sarah's impairments. The ALJ denied the requests, explaining that the record was sufficiently well-developed and that a medical expert was not needed. At the hearing, both Ms. Howard and Sarah testified. The ALJ found, after independently reviewing the medical records and listening to the testimony, that Sarah's impairments did not meet or equal any of the criteria contained in the Listing of Impairments and that, she was no longer disabled. The Appeals Council denied the request for review of the ALJ's decision.

Ms. Howard appealed to the United States District Court for the District of Arizona, where she argued that the ALJ engaged in a selective evaluation of the evidence and failed to consider the combined effects of Sarah's impairments. Additionally, Ms. Howard asserted that the ALJ committed a legal error by not making a reasonable effort to ensure a qualified pediatrician or other individual who specializes in a field of medicine appropriate to Sarah's disability evaluated Sarah's case, under section 1614(a)(3)(I) of the Act, 42 U.S.C. 1382c(a)(3)(I). The district court found that the ALJ did not selectively analyze the evidence and that the ALJ did not err in refusing to call an expert witness in order to evaluate the case. On appeal to the United States Court of Appeals for the Ninth Circuit, Ms. Howard argued that the ALJ considered Sarah's impairments in isolation and failed to consider the combined effects of her impairments. Ms. Howard also argued that the ALJ denied her request and made no effort to have a qualified pediatrician or other individual who specialized in a field of medicine appropriate to Sarah's disability evaluate her case before deciding that Sarah was no longer disabled.

Holding: The Ninth Circuit held that, although the ALJ's decision was supported by substantial evidence, the ALJ committed a legal error by not complying with the mandate of section 1614(a)(3)(I) of the Act, 42 U.S.C. 1382c(a)(3)(I). Section 1614(a)(3)(I) states, in part, that in making ''any determination'' under title XVI of the Act ''with respect to the disability of an individual who has not attained the age

[1] This law changed the standard governing childhood claims under title XVI of the Social Security Act. An individual under the age of 18 will be found disabled under title XVI of the Act if he or she has a ''medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.'' Section 1614(a)(3)(c)(i) of the Act, 42 U.S.C. 1382c(a)(3)(c)(I).

of 18,'' the Commissioner ''shall make reasonable efforts to ensure that a qualified pediatrician or other individual who specializes in a field of medicine appropriate to the disability of the individual***evaluates the case'' of the individual. The Court of Appeals interpreted this to mean that an ALJ is required to make reasonable efforts to obtain a case evaluation, based on the record in its entirety, from a pediatrician or other appropriate specialist, rather than simply evaluating the evidence in the case record on his or her own. The Court of Appeals noted that, despite the various reports from doctors and specialists offering their medical opinions in Sarah's case, the ALJ did not have her case evaluated as a whole. The court also stated that ''[i]t may be that the ALJ achieved substantial compliance with the statute, in that the state agency doctors ***who did evaluate Sarah's case may be appropriate qualified specialists; however, we cannot make that determination on the record. In addition, the ALJ did not consider these evaluations in making his decision.''

Statement As To How Howard Differs From SSA's Interpretation of the Social Security Act

Our regulations make clear that section 1614(a)(3)(I) of the Act, 42 U.S.C. 1382c(a)(3)(I), applies only to determinations made by a State agency and not to decisions made by ALJs or AAJs (when the Appeals Council makes a decision). The words ''determination'' and ''decision'' are terms of art in our program, defined in our regulations at 20 C.F.R. 416.1401. This regulation explains that the word ''determination'' means the initial determination or reconsidered determination, while the term ''decision'' means the decision made by the ALJ or the Appeals Council. Our regulations that implement section 1614(a)(3)(I) of the Act maintain this distinction, providing that the requirement for review by a pediatrician or other appropriate specialist in childhood SSI cases applies only to cases decided by State agencies at the initial and reconsideration levels of the administrative review process. See 20 C.F.R. 416.903(f) and 416.1015(e).[2]

The Ninth Circuit interpreted the statutory provision more broadly than we do, by applying it to cases decided by an ALJ or AAJ (when the Appeals Council makes a decision).

Explanation of How SSA Will Apply the Howard Decision Within the Circuit

This Ruling applies only to title XVI childhood disability cases in which the claimant resided in Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon or Washington at the time of the ALJ or Appeals Council decision. This Ruling applies only to the Administrative Law Judge and Appeal Council levels of the administrative review process.

For cases that are subject to this Ruling, ALJs and AAJs (when the Appeals Council makes a decision) must make reasonable efforts to ensure that a qualified pediatrician or other individual who specializes in a field of medicine appropriate to the disability of the individual (as identified by the ALJ or AAJ) evaluates the case of the individual. To satisfy this requirement, the ALJ or AAJ may rely on case evaluation made by a State agency medical or psychological consultant that is already in the record, or the ALJ or AAJ may rely on the testimony of a medical expert. When the ALJ relies on the case evaluation made by a State agency medical or psychological consultant, the record must include the evidence of the qualifications of the State agency medical or psychological consultant. In any case, the ALJ or AAJ must ensure that the decision explains how the State agency medical or psychological consultant's evaluation was considered. (See also 20 C.F.R. 416.927(f) and Social Security Ruling 96-6p, ''Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence.'' 61 FR 34466 (1996)).

[FR Doc. 04–9337 Filed 4–23–04; 8:45 am]

BILLING CODE 4191–02–S

[2] This interpretation is supported by the statute. Section 221 of the Act, 42 U.S.C. 421, entitled ''Disability Determinations'' specifies in section 221(a), 42 U.S.C. 421(a) that ''the determination of whether or not [an individual] is under a disability * * * shall be made by a State agency * * *.'' Section 221(h) of the Act, 42 U.S.C. 421(h) requires the Commissioner to ''make every reasonable effort'' to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review before a State agency makes ''[a]n initial determination * * * that an individual is not under a disability, in any case where there is evidence which indicates the existence of a mental impairment * * *.'' Section 221 is incorporated by reference in section 1633(a) of the Act, 42 U.S.C. 1383b(a). Section 1614(a)(3)(I) also refers to section 221(h).

DEPARTMENT OF STATE

[Public Notice 4696]

Bureau of Educational and Cultural Affairs; Request for Grant Proposals for the Partnerships for Learning (P4L) Thematic Youth Projects Initiative

SUMMARY: The Office of Citizen Exchanges, Youth Programs Division of the Bureau of Educational and Cultural Affairs announces an open competition for projects under the P4L Thematic Youth Projects Initiative. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to recruit and select youth participants in countries with significant Muslim populations and provide the participants with (1) a reciprocal exchange project focused on cultural and civic enhancement, (2) a reciprocal internship project for undergraduate students with academic backgrounds in business management, information systems, economics, and education, or (3) a university-based project promoting free enterprise principles through entrepreneurship projects and exchange visits from U.S. universities. The three programs are described below.

Program Information

Overview: The P4L Thematic Youth Projects Initiative encompasses the three program areas of cultural and civic exchanges, business internships, and free enterprise initiatives as vehicles through which the successor generation can re-engage in a dialogue for greater understanding.

The Linking Individuals, Knowledge, and Culture (LINC) program is designed to foster mutual understanding between participants (ages 15–17) and Americans as well as a respect for democratic practices and the rule of law through a three to six week reciprocal exchange program that will enhance the participants' knowledge of their host country's history, culture, and system of government.

The Business Internship Initiative (BII) creates reciprocal internship placements where undergraduate university students (ages 17–22) can gain international business and management experience in their area of interest.

Through the Free Enterprise Initiative (FEI), undergraduate students (ages 17–22) in foreign countries develop and implement ideas of free enterprise, business leadership and civil society within their universities and local communities. Through international student exchanges, participants learn