

1320), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 98-7, We Need Important Information About Your Eligibility for Social Security Disability Benefits, is used by OPM to verify receipt of Social Security Administration (SSA) disability benefits, to lessen or avoid overpayments to FERS disability retirees. It notifies the annuitant of the responsibility to notify OPM if SSA benefits begin and the overpayment that will occur with the receipt of both benefits.

Comments are particularly invited on:

- Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;
- Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and
- Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

Approximately 5,500 RI 98-7 forms will be completed annually. We estimate it takes approximately 5 minutes to complete the form. The annual burden is 458 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, FAX (202) 418-3251 or e-mail to mbtoomey@opm.gov. Please include your mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to Lawrence P. Holman, Acting Chief, FERS Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3313, Washington, DC 20415-3520.

For Information Regarding Administrative Coordination—Contact: Cyrus S. Benson, Team Leader, Desktop Publishing and Printing Team, Budget and Administrative Services Division, (202) 606-0623.

U.S. Office of Personnel Management.

Kay Coles James,
Director.

[FR Doc. 02-19950 Filed 8-6-02; 8:45 am]

BILLING CODE 6325-50-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46288; File No. SR-NASD-2002-85]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Issuer Disclosure of Material Information

July 31, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 26, 2002, 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”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Nasdaq proposes to modify its rules pertaining to issuer disclosure of material information. The text of the proposed rule change is below. Proposed additions are in *italics*; proposed deletions are in *brackets*.

4120. Trading Halts

(a) No change.

(b) Procedure for Initiating a Trading Halt

(1) Nasdaq issuers are required to notify Nasdaq of the release of [any] *certain* material news prior to the release of such information to the [press] *public* as required by Rules 4310(c)(16) and 4320(e)(14).

(2) Notification shall be provided directly to Nasdaq's MarketWatch Department by telephone, facsimile, or other compatible means of electronic communication.* Information communicated orally by authorized representatives of a Nasdaq issuer should be confirmed promptly in writing.

*Notification may be provided to the MarketWatch Department by telephone 1-800-537-3929 and (240) 386-6046. Between 7 p.m. and [8] 7:30 a.m. Eastern Time, voice mail messages may be left on either number. The fax number is (240) 386-6046[6]7.

(3)—(6) No change

IM-4120-1. Disclosure of Material Information

Rules 4310(c)(16) and 4320(e)(14) require that, except in unusual circumstances, Nasdaq issuers disclose promptly to the public through [the news media] *any Regulation FD compliant method (or combination of methods) of disclosure* any material information which would reasonably be expected to affect the value of their securities or influence investors' decisions. [and that] Nasdaq issuers *shall* notify Nasdaq of the release of [any] such *material* information *that involves any of the events set forth below* prior to its release to the public [through the news media]. Nasdaq recommends that Nasdaq issuers provide such notification at least ten minutes before such release.** Under unusual circumstances issuers may not be required to make public disclosure of material events; for example, where it is possible to maintain confidentiality of those events and immediate public disclosure would prejudice the ability of the company to pursue its corporate objectives. However, Nasdaq issuers remain obligated to disclose this information to Nasdaq upon request pursuant to Rules 4310(c)(15) or 4320(e)(13).

Whenever unusual market activity takes place in a Nasdaq issuer's securities, the issuer normally should determine whether there is material information or news that should be disclosed. If rumors or unusual market activity indicate that information on impending developments has become known to the investing public, or if information from a source other than the issuer becomes known to the investing public, a clear public announcement may be required as to the state of negotiations or development of issuer plans. Such an announcement may be required, even though the issuer may not have previously been advised of such information or the matter has not yet been presented to the issuer's Board of Directors for consideration. It may also be appropriate, in certain circumstances, to publicly deny false or inaccurate rumors which are likely to have, or have had, an effect on the trading in its securities or would likely have an influence on investment decisions.

Trading Halts

A trading halt benefits current and potential shareholders by halting all trading in any Nasdaq securities until there has been an opportunity for the information to be disseminated to the public. This decreases the possibility of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

some investors acting on information known to them but which is not known to others. A trading halt provides the public with an opportunity to evaluate the information and consider it in making investment decisions. It also alerts the marketplace to the fact that news has been released.

Nasdaq's MarketWatch Department monitors real time trading in all Nasdaq securities during the trading day for price and volume activity. In the event of certain price and volume movements, the MarketWatch Department may contact an issuer and its market makers in order to ascertain the cause of the unusual market activity. The MarketWatch Department treats the information provided by the issuer and other sources in a highly confidential manner, and uses it to assess market activity and assist in maintaining fair and orderly markets. A Nasdaq listing includes an obligation to disclose to the MarketWatch Department information that the issuer is not otherwise disclosing to the investing public or the financial community. On occasion, changes in market activity prior to the issuer's release of material information may indicate that the information has become known to the investing public. Changes in market activity also may occur when there is a release of material information by a source other than the issuer, such as when a Nasdaq issuer is subject to an unsolicited take-over bid by another company. Depending on the nature of the event and the issuer's views regarding the business advisability of disclosing the information, the MarketWatch Department may work with the issuer to accomplish a timely release of the information. Furthermore, depending on the materiality of the information and the anticipated affect of the information on the price of the issuer's securities, the MarketWatch Department may advise the issuer that a temporary trading halt is appropriate to allow for full dissemination of the information and to maintain an orderly market. The institution of a temporary trading halt pending the release of information is not a reflection on the value of the securities halted. Such trading halts are instituted, among other reasons, to insure that material information is fairly and adequately disseminated to the investing public and the marketplace, and to private investors with the opportunity to evaluate the information in making investment decisions. A trading halt normally lasts one half hour but may last longer if a determination is made that news has not been adequately disseminated or that the original or an

additional basis under Rule 4120 exists for continuing the trading halt.

The MarketWatch Department is required to keep non-public information confidential and to use such information only for regulatory purposes.

[Material information which would reasonably be expected to affect the value of the securities of an issuer or influence investors' decisions would include information regarding issuer events of an unusual and/or nonrecurrent nature.] *Issuers are required to notify the MarketWatch Department of the release of material information included in the following list of events prior to the release of such information to the public.* [The following list of events, while not an exhaustive summary of all situations in which disclosure to Nasdaq should be considered, may be helpful in determining whether information is material.] It should also be noted that every development that might be reported to Nasdaq in these areas would not necessarily be deemed to warrant a trading halt. *In addition to the following list of events, Nasdaq encourages issuers to avail themselves of the opportunity for advance notification to the MarketWatch Department in situations where they believe, based upon their knowledge of the significance of the information, that a temporary trading halt may be necessary or appropriate.*

- a merger, acquisition or joint venture;
- a stock split or stock dividend;
- earnings and dividends of an unusual nature;
- the acquisition or loss of a significant contract;
- a significant new product or discovery;
- a change in control or a significant change in management;
- a call of securities for redemption;
- the public or private sale of a significant amount of additional securities;
- the purchase or sale of a significant asset;
- a significant labor dispute;
- establishment of a program to make purchases of the issuer's own shares;
- a tender offer for another issuer's securities; and
- an event requiring the filing of a current report under the Act.]

(a) *Financial-related disclosures, including quarterly or yearly earnings, earnings restatements, pre-announcements or "guidance."*

(b) *Corporate reorganizations and acquisitions, including mergers, tender offers, asset transactions and bankruptcies or receiverships.*

(c) *New products or discoveries, or developments regarding customers or suppliers (e.g., significant developments in clinical or customer trials, and receipt or cancellation of a material contract or order).*

(d) *Senior management changes of a material nature or a change in control.*

(e) *Resignation or termination of independent auditors, or withdrawal of a previously issued audit report.*

(f) *Events regarding the issuer's securities—e.g., defaults on senior securities, calls of securities for redemption, repurchase plans, stock splits or changes in dividends, changes to the rights of security holders, or public or private sales of additional securities.*

(g) *Significant legal or regulatory developments.*

(h) *Any event requiring the filing of a Form 8-K.*

Use of Regulation FD Compliant Methods in the Disclosure of Material Information

Regardless of the method of disclosure that an issuer chooses to utilize, issuers are required to notify the MarketWatch Department of the release of material information that involves any of the events set forth above prior to its release to the public. Nasdaq recommends that issuers provide such notification at least ten minutes before such release. When an issuer chooses to utilize a Regulation FD compliant method for disclosure other than a press release or Form 8-K, the issuer will be required to provide prior notice to the MarketWatch Department of: (1) the press release announcing the logistics of the future disclosure event; and (2) a descriptive summary of the material information to be announced during the disclosure event if the press release does not contain such a summary.

Depending on the materiality of the information and the anticipated effect of the information on the price of the issuer's securities, the MarketWatch Department may advise the issuer that a temporary trading halt is appropriate to allow for full dissemination of the information and to maintain an orderly market. The MarketWatch Department will assess with issuers utilizing methods of disclosure other than a press release or Form 8-K the timing within the disclosure event when the issuer will cover the material information so that the halt can be commenced accordingly. Issuers will be responsible for promptly alerting the MarketWatch Department of any significant changes to the previously outlined disclosure timeline. Issuers are reminded that the posting of information on its own website is not by

itself considered a sufficient method of public disclosure under Regulation FD, and as a result, under Nasdaq rules.

[Use of the Internet in the Disclosure of Material Information]

While Nasdaq requires that its listed issuers disseminate material press releases over one of the major news wires, Nasdaq recognizes the increased utilization of the Internet as a vehicle for additional news dissemination. The Internet is a valuable disclosure resource that can enhance the orderly dissemination of material information for all shareholders and market participants.

Issuers can and should provide shareholders direct access to corporate disclosures via their Internet home pages and web sites.

To ensure a level playing field for all investors in Nasdaq companies, however, this policy on disclosure of corporate information requires that the use of the Internet to disseminate material press releases is appropriate provided the information is not made available over the Internet before the same information is transmitted to, and received by, the traditional news vendor services. Issuers must still notify Nasdaq at least ten minutes prior to the release of any information that would reasonably be expected to affect the value of securities or influence investors' decisions, as indicated in this policy.]

**Notification may be provided to the MarketWatch Department by telephone 1-800-537-3929 and (240) 386-6046. Between 7 p.m. and [8] 7:30 a.m. Eastern Time, voice mail messages may be left on either number. Information communicated orally should be confirmed promptly in writing. The fax number is (240) 386-6046[7].

4310. Qualification Requirements for Domestic and Canadian Securities

To qualify for inclusion in Nasdaq, a security of a domestic or Canadian issuer shall satisfy all applicable requirements contained in paragraphs (a) or (b), and (c) hereof.

(a)-(b) No change.

(c) In addition to the requirements contained in paragraph (a) or (b) above, and unless otherwise indicated, a security shall satisfy the following criteria for inclusion in Nasdaq:

(1)-(15) No change.

(16) Except in unusual circumstances, the issuer shall make prompt disclosure to the public through [the news media] *any Regulation FD compliant method (or combination of methods) of disclosure* of any material information that would reasonably be expected to

affect the value of its securities or influence investors' decisions [and shall]. *The issuer shall, prior to the release of the information, provide notice of such disclosure to Nasdaq's MarketWatch Department if the information involves any of the events set forth in IM-4120-1.**

*[This notice shall be made to Nasdaq's MarketWatch Department at 9509 Key West Avenue, Rockville, Maryland 20850-3351. The telephone numbers are] *Notification may be provided to the MarketWatch Department by telephone 1-800-537-3929 and (240) 386-6046. Between 7 p.m. and [8] 7:30 a.m. Eastern Time, voice mail messages may be left on either number. The fax number is (240) 386-6047.*

(17)-(29) No change.

(d) No change.

4320. Qualification Requirements for Non-Canadian Foreign Securities and American Depositary Receipts

To qualify for inclusion in Nasdaq, a security of a non-Canadian foreign issuer, an American Depositary Receipt (ADR) or similar security issued in respect of a security of a foreign issuer shall satisfy the requirements of paragraphs (a), (b) or (c), and (d) and (e) of this Rule.

(a)-(d) No change.

(e) In addition to the requirements contained in paragraphs (a), (b) or (c), and (d), the security shall satisfy the following criteria for inclusion in Nasdaq:

(1)-(13) No change.

(14) Except in unusual circumstances, the issuer shall make prompt disclosure to the public in the United States through [international wire services or similar disclosure media] *any Regulation FD compliant method (or combination of methods) of disclosure* of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions [and shall]. *The issuer shall, prior to the release of the information, provide notice of such disclosure to Nasdaq if the information involves any of the events set forth in IM-4120-1.**

*[This notice shall be made to Nasdaq's MarketWatch Department at 9509 Key West Avenue, Rockville, Maryland 20850-3351. The telephone numbers are] *Notification may be provided to the MarketWatch Department by telephone 1-800-537-3929 and (240) 386-6046. Between 7 p.m. and [8] 7:30 a.m. Eastern Time, voice mail messages may be left on either number. The fax number is (240) 386-6047.*

(15)-(25) No change.

(f) No change.

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Regulation Fair Disclosure ("Regulation FD" or "Reg FD") was adopted by the SEC in order to curb the selective disclosure of material non-public information by issuers to analysts and institutional investors. Generally, Regulation FD requires that when an issuer discloses material information, it do so publicly. Public disclosure under Reg FD can be accomplished by filing a Form 8-K with the SEC or through another method of disclosure that is reasonably designed to provide broad, non-exclusionary distribution of the information to the public.

Nasdaq has determined to harmonize its rules pertaining to issuer disclosure of material information with Reg FD by allowing issuers to disseminate material information via the same means permitted under Reg FD. Nasdaq also proposes to revise the list of material events set forth in IM-4120-1 and require issuers to provide prior notification to the MarketWatch Department only for information that involves any of the material events set forth in this list.

Disclosure of Material Information. Currently, Nasdaq rules require that, except in unusual circumstances, Nasdaq listed companies promptly disclose to the public through the news media any material information which would reasonably be expected to affect the value of their securities or influence investors' decisions.³ This disclosure must be made via a press release that is distributed through news services such as Dow Jones, Reuters, Bloomberg, Business Wire or PR Newswire. In order

³ See IM-4120-1.

to provide issuers with the flexibility afforded under Regulation FD, Nasdaq proposes to modify its rules in order to recognize all Reg FD compliant disclosure methods as a means for issuer compliance with Nasdaq disclosure obligations. In addition to a broadly disseminated press release, Reg FD compliant methods of disclosure include furnishing to or filing with the SEC a Form 8-K as well as conference calls, press conferences and webcasts, so long as the public is provided adequate notice (generally by press release) and granted access.⁴

By aligning Nasdaq disclosure options with those outlined in Reg FD, Nasdaq will enable issuers to recognize the benefits of utilizing current technologies as part of a comprehensive issuer disclosure strategy. In addition, issuer confusion between Reg FD compliant and Nasdaq compliant disclosure plans will be minimized. Lastly, allowing Nasdaq issuers to use Regulation FD compliant methods of disclosure will address the concerns that have been raised regarding self-regulatory organization rules overriding the flexibility provided by Reg FD.⁵

Irrespective of the method of disclosure, issuers will be required to provide prior notification of certain planned material news announcements to the MarketWatch Department prior to their release to the public.⁶ Issuers using a press release or Form 8-K must notify MarketWatch by faxing the press release or Form 8-K, or providing the material information by phone prior to public dissemination.⁷ When using a conference call, press conference or Web cast as the primary means for disclosure, issuers will be required to provide prior notice to MarketWatch of:

- The press release announcing the future conference call, press conference or Web cast; and
- A descriptive summary of the material elements to be announced in the call, press conference or Web cast if the press release does not contain a summary.

MarketWatch will continue to evaluate the materiality of these disclosures and implement temporary trading halts, where appropriate, to facilitate the orderly dissemination of certain issuer announcements having a

potentially material impact on the price of the securities.⁸ MarketWatch will assess with issuers using press conferences, conference calls and webcasts the timing during the event where the issuer will cover the material points. For example, if an issuer plans to commence discussing the material information ten minutes into the event and expects it to take fifteen minutes to address, MarketWatch will coordinate the resumption of trading (usually thirty minutes following dissemination of the material news) based on the material news being covered twenty-five minutes after the start of the event.⁹ If a press release announcing a future conference call, press conference or webcast contains details of the essential material disclosure, Nasdaq may halt trading for dissemination of this statement. In that instance, trading would not be halted again for the subsequent press conference, conference call or webcast.

MarketWatch Notification Categories. Nasdaq rules currently require issuers to notify Nasdaq of the release of any material information prior to its release to the public.¹⁰ Prior notification allows Nasdaq's MarketWatch Department to determine whether a temporary trading halt of an issuer's securities is appropriate to allow the full dissemination of the information to the public. In order to assist issuers in determining whether information is material, IM-4120-1 currently provides a non-exhaustive list of events that may affect the value of an issuer's securities or influence investors' decisions. Nasdaq proposes to revise the list set forth in IM-4120-1 and require issuers to provide prior notification to MarketWatch only of material information that involves the events set forth in this list.

The revised list is comprised of the events that are expected to have a material impact on the price of an issuer's securities or on investors' decisions. The list was developed through the analysis of Nasdaq trading halt data and material information categories outlined in other sources, including Reg FD. In fact, the events are generally similar to those enumerated in the Regulation FD adopting release,¹¹

but include certain additional clarifications deemed appropriate by Nasdaq. The following is a list of the categories of material information that must be disclosed to the MarketWatch Department prior to public dissemination:

(a) Financial-related disclosures, including quarterly or yearly earnings, earnings restatements, pre-announcements or "guidance."

(b) Corporate reorganizations and acquisitions, including mergers, tender offers, asset transactions and bankruptcies or receiverships.

(c) New products or discoveries, or developments regarding customers or suppliers (e.g., significant developments in clinical or customer trials, and receipt or cancellation of a material contract or order).

(d) Senior management changes of a material nature or a change in control.

(e) Resignation or termination of independent auditors, or withdrawal of a previously issued audit report.

(f) Events regarding the issuer's securities—e.g., defaults on senior securities, calls of securities for redemption, repurchase plans, stock splits or changes in dividends, changes to the rights of security holders, or public or private sales of additional securities.

(g) Significant legal or regulatory developments.

(h) Any event requiring the filing of a Form 8-K.

The proposed rule does not relieve Nasdaq issuers of their requirement to promptly disclose to the public any material information that would reasonably be expected to affect the value of their securities or influence investors' decisions. Rather, the rule sets forth those instances in which issuers must provide prior notice to Nasdaq before the disclosure of the material information to the public. Of course, Nasdaq issuers are encouraged to provide advance notification to MarketWatch of material information that does not involve the events set forth in the above list in situations where they believe, based upon their knowledge of the significance of the information, that a temporary trading halt may be necessary or beneficial.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,¹² in general, and with section 15A(b)(6) of the Act,¹³ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, and, in

⁴ Securities Exchange Act Release No. 43154 (August 15, 2000), 65 FR 51716 (August 24, 2000) at 51724.

⁵ See e.g., Unger, *Special Study: Regulation Fair Disclosure Revisited* (December 2001).

⁶ Nasdaq recommends that issuers provide such information at least 10 minutes before the release of the information to the public.

⁷ Information communicated orally should be confirmed promptly in writing.

⁸ Separate from this filing, Nasdaq will soon be seeking public comment on several issues related to trading halts, including a possible pilot halt-free period during the after hours trading session, the length of halts, and the procedure for resumption of trading following a halt.

⁹ It will be the issuer's responsibility to promptly alert MarketWatch of any significant changes to a previously outlined disclosure timeline.

¹⁰ See IM-4120-1.

¹¹ Securities Exchange Act Release No. 43154 (August 15, 2000), 65 FR 51716 (August 24, 2000) at 51721.

¹² 15 U.S.C. 78o-3.

¹³ 15 U.S.C. 78o-3(b)(6).

general, to protect investors and the public interest. As noted above, Nasdaq believes the harmonization of Nasdaq's disclosure rules with Regulation FD will minimize issuer confusion while at the same time allowing issuers to utilize current technologies for the broad, non-exclusionary dissemination of material information to the public. In addition, Nasdaq believes the development of a list of categories of material information that must be disclosed to the MarketWatch Department prior to public dissemination will provide greater transparency for issuers while allowing Nasdaq to continue to ensure the fair and adequate dissemination of material information to the public.

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

Nasdaq 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

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 number SR-NASD-2002-85 and should be submitted by August 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-19890 Filed 8-6-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46289; File No. SR-NASD-2002-103]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend NASD Interpretive Material 8310-2 Regarding the Release of Disciplinary Information to the Public

July 31, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 31, 2002, the National Association of Securities Dealers, Inc. ("NASD") 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 the NASD. The NASD filed the proposal pursuant to section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The NASD provided the Commission with notice of its intent to file the proposed rule change on June 28, 2002. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

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

The NASD proposes to amend NASD Interpretive Material 8310-2 ("IM-8310-2") to clarify the terms under which the NASD will release disciplinary information to the public. The proposed rule change will become operative on September 1, 2002. The text of the proposed rule change is below. Proposed additions are in *italics*; proposed deletions are in *brackets*.

IM-8310-2. Release of Disciplinary Information

(a) through (c) No change.

(d)(1) [The Association] *NASD* shall release to the public information with respect to any disciplinary decision issued pursuant to the Rule 9000 Series imposing a suspension, cancellation or expulsion of a member; or suspension or revocation of the registration of a person associated with a member; or suspension or barring of a member or person associated with a member from association with all members; or imposition of monetary sanctions of \$10,000 or more upon a member or person associated with a member; or containing an allegation of a violation of a Designated Rule; and may also release such information with respect to any disciplinary decision or group of decisions that involve a significant policy or enforcement determination where the release of information is deemed by the President of NASD [Regulation, Inc.] *Regulatory Policy and Oversight* to be in the public interest. [The Association] *NASD* also may release to the public information with respect to any disciplinary decision issued pursuant to the Rule 8220 Series imposing a suspension or cancellation of the member or a suspension of the association of a person with a member, unless the National Adjudicatory Council determines otherwise. The National Adjudicatory Council may, in its discretion, determine to waive the requirement to release information with respect to a disciplinary decision under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice. [The Association] *NASD* may release to the public information on any [other final, litigated,] disciplinary decision issued pursuant to the Rule 8220 Series or Rule 9000 Series, not specifically enumerated in this paragraph, regardless of sanctions imposed, so long as the names of the parties and other identifying information is redacted.