

be submitted to OMB within 30 days of this notice.

Dated: September 6, 2005.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. E5-4977 Filed 9-12-05; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

*Extension:* Rule 17a-19; SEC File No. 270-148; OMB Control No. 3235-0133

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for approval of extension on the following rule: 17 CFR 240.17a-19 and Form X-17A-19 of the Securities Exchange Act of 1934.

Rule 17a-19 requires National Securities Exchanges and Registered National Securities Associations to file a Form X-17A-19 with the Commission within 5 days of the initiation, suspension or termination of a member in order to notify the Commission that a change in designated examining authority may be necessary.

It is anticipated that approximately eight National Securities Exchanges and Registered National Securities Associations collectively will make 1,800 total annual filings pursuant to Rule 17a-19 and that each filing will take approximately 15 minutes. The total burden is estimated to be approximately 450 total annual hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov); and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and

Exchange Commission, 100 F Street, NE., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 6, 2005.

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52376A; File No. SR-NASD-2005-102]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Allow Members To Report Certain Trades in Exchange-Listed Securities Through the Execution Services of the Nasdaq Market Center

September 7, 2005.

#### Correction

On September 1, 2005, the Commission issued notice on a proposed rule change by the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq").<sup>1</sup> The proposed rule text in the first paragraph of NASD Rule 4720 should state as follows below. Proposed new language is in italics; proposed deletions are in brackets.

Subject to the conditions set forth below, members may utilize the Nasdaq Market Center to report trades in Nasdaq Market Center eligible securities required or eligible to be reported to Nasdaq pursuant to the Rule 4630, 4640, 4650, [and] 6100 *and 6400 Series.*"

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>2</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. E5-4979 Filed 9-12-05; 8:45 am]

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<sup>1</sup> See Exchange Act Release No. 52376 (September 1, 2005).

<sup>2</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52385; File No. SR-NASD-2005-082]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Clarify the Listing Standards Applicable to Companies in Bankruptcy Proceedings

September 7, 2005.

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 June 22, 2005, 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. On August 23, 2005, Nasdaq filed Amendment No. 1 to the proposed rule change.<sup>3</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

Nasdaq proposes to clarify the listing standards applicable to companies in bankruptcy proceedings. Nasdaq will implement the proposed rule immediately upon approval.

The text of the proposed rule change is set forth below. Proposed new language is italicized.<sup>4</sup>

#### 4340. Application for Re-inclusion by Listed Issuers

(a) Reverse Mergers. An issuer must apply for initial inclusion following a transaction whereby the issuer combines with a non-Nasdaq entity, resulting in a change of control of the

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

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

<sup>3</sup> In Amendment No. 1, Nasdaq made a non-substantive correction to the text of the proposed rule and a correction to the stated purpose of the proposed rule change.

<sup>4</sup> Changes to NASD Rule 4340 are marked to the rule text, which the Commission recently approved in Securities Exchange Act Release No. 52342 (August 26, 2005), 70 FR 52456 (September 2, 2005) (SR-NASD-2004-125). Changes to NASD Rule 4350 are marked to the current version of the rule text. No other pending rule filings would affect the text of these rules. Telephone conversation of September 7, 2005, between Arnold Golub, Associate Vice President, Nasdaq and David Michehl, Attorney, Division of Market Regulation, Commission.

issuer and potentially allowing the non-Nasdaq entity to obtain a Nasdaq Listing (for purposes of this rule, such a transaction is referred to as a "Reverse Merger"). In determining whether a Reverse Merger has occurred, Nasdaq shall consider all relevant factors including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the issuer. Nasdaq shall also consider the nature of the businesses and the relative size of the Nasdaq issuer and non-Nasdaq entity.

(b) *Bankruptcy.* Nasdaq may use its discretionary authority under Rule 4300 to deny listing to an issuer that has filed for protection under any provision of the federal bankruptcy laws or comparable foreign laws, even though the issuer's securities otherwise meet all enumerated criteria for continued inclusion in Nasdaq. In the event that Nasdaq determines to continue the listing of such an issuer during a bankruptcy reorganization, the issuer shall nevertheless be required to satisfy all requirements for initial inclusion, including the payment of initial listing fees, upon emerging from bankruptcy proceedings.

4350. *Qualitative Listing Requirements for Nasdaq National Market and Nasdaq SmallCap Market Issuers Except for Limited Partnerships*

(a)—(h) No change.

(i) Shareholder Approval

(1)—(6) No change.

(7) *Shareholder approval shall not be required for any share issuance by a company if such issuance is part of a court-approved reorganization under the federal bankruptcy laws or comparable foreign laws.*

\* \* \* \* \*

## 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

When a Nasdaq-listed issuer files for protection under the bankruptcy laws, Nasdaq staff generally notifies the company that its securities are subject to delisting.<sup>5</sup> The company is afforded an opportunity to request review of that decision before a Nasdaq Listing Qualifications Hearing Panel ("Panel"), which stays its delisting. On occasion, Panels have allowed companies to retain their listing through the bankruptcy proceeding, provided they demonstrate: their ability to maintain compliance with the continued listing standards throughout the proceeding; a likelihood that the current equity holders will maintain a significant position in the post-bankruptcy company; and, a likelihood to emerge from the bankruptcy proceedings in the reasonably near term, such as may be the case in a "pre-packaged" bankruptcy plan.<sup>6</sup> Nonetheless, upon emerging from bankruptcy, these companies are often substantially changed, including new board members, management, financial structure, and shareholders. As such, Nasdaq believes that the reorganization could potentially lead to an entity that is effectively a new issuer. These concerns are the same ones presented when considering whether a transaction is a reverse merger and, in those cases, the company is required to reapply and meet the initial inclusion standards.<sup>7</sup> Nasdaq therefore believes that a reorganized company should be required to apply for listing and meet all initial inclusion criteria upon discharge from bankruptcy proceedings.

Nasdaq also proposes to clarify that any securities issued by a Nasdaq-listed issuer pursuant to a court-approved plan of reorganization are exempt from Nasdaq's shareholder approval rules. In such cases, the bankruptcy court has jurisdiction over the protection of shareholders, and it would be

<sup>5</sup> Nasdaq's delisting notice generally is based on one or more of the following concerns: (i) Public interest concerns raised by the bankruptcy filing; (ii) concerns regarding the residual equity interest of the existing listed securities holders; or (iii) concerns about the company's ability to sustain compliance with all requirements for continued listing.

<sup>6</sup> In that regard, the Commission recently approved rules that would limit a Panel's discretion to grant exceptions to the listing standards to 90 days. See Securities Exchange Act Release No. 51268 (February 28, 2005), 70 FR 10716 (March 4, 2005) (SR-NASD-2004-125).

<sup>7</sup> See NASD Rule 4330(f), which was recently renumbered in SR-NASD-2004-125 as NASD Rule 4340.

inconsistent with the overarching federal bankruptcy policy to give shareholders an ability to contradict the court's approval of a plan of reorganization that involves the issuance of shares. This approach would be consistent with that taken in Section 1145 of Chapter 11 of the Bankruptcy Code,<sup>8</sup> which exempts securities issued in bankruptcy reorganizations from Section 5 of the Securities Act of 1933.<sup>9</sup>

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>10</sup> in general, and with Section 15A(b)(6) of the Act,<sup>11</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, protect investors and the public interest. Nasdaq believes that the proposed rule change is consistent with these requirements in that it is designed to remove ambiguity surrounding the standards applicable to companies involved in bankruptcy proceedings and requires such companies to meet the heightened initial inclusion standards upon emerging from bankruptcy, thereby protecting investors and the public interest.

### 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 self-regulatory organization consents, the Commission will:

<sup>8</sup> 11 U.S.C. 1145.

<sup>9</sup> 15 U.S.C. 77e.

<sup>10</sup> 15 U.S.C. 78o-3.

<sup>11</sup> 15 U.S.C. 78o-3(b)(6).

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, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2005-082 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-082. This 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, 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. 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-NASD-2005-082 and should be submitted on or before October 4, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Jonathan G. Katz,**  
*Secretary.*

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#### DEPARTMENT OF STATE

[Public Notice 5188]

##### **Culturally Significant Objects Imported for Exhibition Determinations: "Elizabeth Murray"**

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition, "Elizabeth Murray," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Museum of Modern Art, New York, New York, from on or about October 23, 2005, to on or about January 9, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/453-8052, and the address is United States Department of State, SA-44, Room 700, 301 4th Street, SW., Washington, DC 20547-0001.

Dated: September 7, 2005.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 05-18127 Filed 9-12-05; 8:45 am]

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#### DEPARTMENT OF STATE

[Public Notice 5189]

##### **Culturally Significant Objects Imported for Exhibition Determinations: "Pompeii: Stories from an Eruption"**

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition, "Pompeii: Stories from an Eruption," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Field Museum, Chicago, Illinois, from on or about October 22, 2005, to on or about March 26, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/453-8052, and the address is United States Department of State, SA-44, Room 700, 301 4th Street, SW., Washington, DC 20547-0001.

Dated: September 7, 2005.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 05-18126 Filed 9-12-05; 8:45 am]

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#### DEPARTMENT OF STATE

[Public Notice 5187]

##### **Culturally Significant Objects Imported for Exhibition Determinations: "Ewer"**

**AGENCY:** Department of State.

**ACTION:** Notice.

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