

clearance, and settlement of transactions with customers. These amendments established three business days as the standard settlement time frame for regular-way transactions in municipal securities.<sup>5</sup> The MSRB reviewed its rules to determine whether or not additional rule changes were necessary to facilitate the movement to T+3 settlement and determined that additional amendments to rule G-15 are necessary to facilitate T+3 settlement for municipal securities transactions.

Currently, rule G-15(d) states that a dealer shall give to send to a DVP/RVP customer a confirmation with respect to an execution of an order no later than the close of business on the next business day after execution ("T+1").<sup>6</sup> The rule does not specify the timing for the submission of transaction data to an automated confirmation/acknowledgement system although it did require that nearly all municipal securities transactions with institutional customers be processed in such a system.<sup>7</sup> As amended, rule G-15(d) now will require dealers to give or send the confirmation and to submit transaction data on an automated confirmation/acknowledgement system on the trade date rather than on T+1.<sup>8</sup>

## II. Discussion

Section 15B(b)(2)(C) of the Act provides that the MSRB has the

<sup>5</sup> Securities Exchange Act Release No. 35427 (February 28, 1995), 60 FR 12798 [File No. SR-MSRB-94-10].

<sup>6</sup> The terms "DVP/RVP customer" and "institutional customer" both refer to customers whose transactions with dealers are settled on a delivery versus payment or receipt versus payment basis.

<sup>7</sup> The automated clearance and settlement process includes several steps. Initially, dealers submit transaction information to an automated confirmation/acknowledgement system followed by the institutional customer receiving notification requesting acknowledgement of the transaction through the automated system. Once the institutional customer acknowledges the transaction, the transaction is then ready for automated settlement to occur at the depository on settlement date.

<sup>8</sup> Rule G-15(a) states that a confirmation containing certain information must be given or sent to each customer. Some dealers use an automated confirmation/acknowledgement system as the exclusive mechanism for confirmation transactions to DVP/RVP customers (i.e., no paper confirmation is sent). The MSRB has stated that use of an automated confirmation/acknowledgement system to deliver a confirmation meeting the information requirements of rule G-15(a) is permissible as long as all information required by rule G-15(a) is included on the electronic confirmation generated by that system. The MSRB, however, has not specified that an automated confirmation/acknowledgement system is the exclusive mechanism for sending confirmation information required by rule G-15(a) to DVP/RVP customers. Some dealers continue to use both the automated confirmation/acknowledgement system and also send paper confirmations.

authority to adopt rules to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities.<sup>9</sup> The Commission believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act because the proposal will foster cooperation and coordination with persons engaged in the clearance and settlement of municipal securities by providing a standard, specific time (i.e., on the date of execution) for broker/dealers extending DVP/RVP privileges to institutional customers to submit transaction information to an automated confirmation/acknowledgement system of a registered clearing agency and to give or send confirmation to those customers. The Commission believes the proposal also fosters cooperation and coordination with persons engaged in the processing of information with respect to municipal securities transactions because the success of the proposed Phase II of the MSRB's Transaction Reporting Program will depend on timely and accurate submission of institutional customer transaction data on trade date to the automated confirmation/acknowledgement system.<sup>10</sup>

Furthermore, in a T+3 settlement environment the proposal should help to ensure more timely confirmation and acknowledgement of DVP/RVP customer transactions. With a T+3 settlement cycle, less time will exist for the communications between dealers and institutional customers necessary to clear and settle transactions. Accordingly, by requiring the transaction data to be submitted to an automated confirmation/acknowledgement system on trade date, the likelihood that trades between municipal dealers and institutional customers will fail to settlement on T+3 is greatly reduced.

The Commission has requested and the MSRB has agreed to monitor the abilities of municipal securities broker-dealers to meet the new deadline set forth in amended Rule G-15(d) and to report the results of its findings to the Commission six months from the date of implementation of the rule change.<sup>11</sup>

<sup>9</sup> 15 U.S.C. 78o-3(b)(2)(C) (1988).

<sup>10</sup> For a complete description of Phase II of the MSRB's Transaction Reporting Program, refer to "Transaction Reporting Program for Municipal Securities: Phase II," *MSRB Reports*, Vol. 15, No. 1 (April 1995).

<sup>11</sup> Conversation between Judith A. Somerville, Uniform Practice Specialist, MSRB, and Peggy Robb Blake, Attorney, Division of Market Regulation, Commission (June 29, 1995).

## III. Conclusion

The Commission finds that the MSRB's proposal is consistent with the requirements of the Act and particularly with Section 15B(b)(2)(C).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-MSRB-95-03) be, and hereby is approved and will become effective thirty days from the date of approval by the Commission.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-16655 Filed 7-6-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-35918; File No. SR-NASD-95-31]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to an Interim Extension of the OTC Bulletin Board® Service Through September 28, 1995

June 29, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 28, 1995, 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is simultaneously approving the proposal.

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

On June 1, 1990, the NASD, through a subsidiary corporation, initiated operation of the OTC Bulletin Board Service ("OTCBB Service" or "Service") in accord with the Commission's approval of File No. SR-NASD-88-19, as amended.<sup>1</sup> The OTCBB Service provides a real-time quotation medium that NASD member firms can elect to use to enter, update, and retrieve quotation information (including unpriced indications of interest) for

<sup>12</sup> 17 CFR 200.300-3(a)(12) (1994).

<sup>1</sup> Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19124 (May 8, 1990).

securities traded over-the-counter that are neither listed on The Nasdaq Stock Market<sup>SM</sup> nor on a primary national securities exchange (collectively referred to as "OTC Equities").<sup>2</sup> Essentially, the Service supports NASD members' market making in OTC Equities through authorized Nasdaq Workstation units. Real-time access to quotation information captured in the Service is available to subscribers of Level 2/3 Nasdaq service as well as subscribers of vendor-sponsored services that now carry OTCBB Service data. The Service is currently operating under interim approval that was scheduled to expire on June 28, 1995.<sup>3</sup>

The NASD hereby files this proposed rule change, pursuant to Section 19(b)(1) of the Act and Rule 19b-4 thereunder, to obtain authorization for an interim extension of the Service through September 28, 1995. During this interval, there will be no material change in the OTCBB Service's operational features, absent Commission approval of a corresponding Rule 19b-4 filing.

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

In its filing with the Commission, the NASD 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. The NASD 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

The purpose of this filing is to ensure continuity in the operation of the OTCBB Service while the Commission considers an earlier NASD rule filing (File No. SR-NASD-92-7) that requested permanent approval of the

<sup>2</sup> With the Commission's January 1994 approval of File No. SR-NASD-93-24, the universe of securities eligible for quotation in the OTCBB now includes certain equities listed on regional stock exchanges that do not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape Association. Securities Exchange Act Release No. 33507 (January 24, 1994), 59 FR 4300 (order approving File No. SR-NASD-93-24).

<sup>3</sup> Securities Exchange Act Release No. 35652 (April 27, 1995), 60 FR 22086.

Service.<sup>4</sup> For the month ending May 31, 1995, the Service reflected the market making positions of 425 NASD member firms displaying quotations/indications of interest in approximately 5,238 OTC Equities.

During the proposed extension, foreign securities and ADRs (collectively, "foreign/ADR issues") will remain subject to the twice-daily, update limitation that traces back to the Commission's original approval of the OTCBB Service's operation. As a result, all priced bids/offers displayed in the Service for foreign/ADR issues will remain indicative.

In conjunction with the start-up of the Service in 1990, the NASD implemented a filing requirement (under Section 4 of Schedule H to the NASD By-Laws) and review procedures to verify members firms' compliance with Rule 15c2-11 under the Act. During the proposed extension, this review process will continue to be an important component of the NASD's oversight of broker-dealers' market making in OTC Equities. The NASD also expects to work closely with the Commission staff in developing further enhancements to the Service to fulfill the market structure requirements mandated by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, particularly Section 17B of the Act.<sup>5</sup> The NASD notes that implementation of the Reform Act entails Commission rulemaking in several areas, including the development of mechanisms for gathering and disseminating reliable quotation/transaction information for "penny stocks."

#### 2. Statutory Basis

The NASD believes that the proposed rule change is consistent with Sections

<sup>4</sup> The Commission notes that the NASD has filed with the Commission Amendments Nos. 1 and 2 to File No. SR-NASD-92-07, concerning the eligibility of unregistered foreign securities and American Depository Receipts ("ADRs") for inclusion in the OTCBB. The amendments were published in the **Federal Register** for comment on November 18, 1994. See Securities Exchange Act Release No. 34956 (November 9, 1994), 59 FR 59808.

<sup>5</sup> On November 24, 1992, the NASD filed an application with the Commission for interim designation of the Service as an automated quotation system pursuant to Section 17B(b) of the Act. On December 30, 1992, the Commission granted Qualifying Electronic Quotation System ("QEQS") status for the Service for purposes of certain penny stock rules that became effective on January 1, 1993. On August 26, 1993, the Commission granted the NASD's request for an extension of QEQS status until such time as the OTCBB meets the statutory requirements of Section 17B(b)(2). Finally, on May 13, 1994, the NASD filed an application with the Commission for permanent designation of the Service as an automated quotations system for penny stocks pursuant to Section 17B(b).

11A(a)(1), 15A(b) (6) and (11), and Section 17B of the Act. Section 11A(a)(1) sets forth the Congressional findings and policy goals respecting operational enhancements to the securities markets. Basically, the Congress found that new data processing and communications techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, and foster competition among market participants. Section 15A(b)(6) requires, among other things, that the NASD's rules promote just and equitable principles of trade, facilitate securities transactions, and protect public investors. Subsection (11) thereunder authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter for the purposes of producing fair and informative quotations, preventing misleading quotations, and promoting orderly procedures for collecting and disseminating quotations. Finally, Section 17B contains Congressional findings and directives respecting the collection and distribution of quotation information on low-priced equity securities that are neither Nasdaq nor exchange-listed.

The NASD believes that extension of the Service through September 28, 1995, is fully consistent with the foregoing provisions of the Act.

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

The NASD believes that the rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### 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 NASD requests that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register** to avoid any interruption of the Service. The current authorization for the Service extends through June 28, 1995. Hence it is imperative that the Commission approve the instant filing on or before that date. Otherwise, the NASD will be required to suspend

operation of the Service pending Commission action on the proposed extension.

The NASD believes that accelerated approval is appropriate to ensure continuity in the Service's operation pending a determination on permanent status for the Service, as requested in File No. SR-NASD-92-7. Continued operation of the Service will ensure the availability of an electronic quotation medium to support member firms' market making in approximately 5,238 OTC Equities and the widespread dissemination of quotation information on these securities. The Service's operation also expedites price discovery and facilitates the execution of customer orders at the best available price. From a regulatory standpoint, the NASD's capture of quotation data from participating market makers supplements the price and volume data reported by member firms pursuant to Part XII of Schedule D to the NASD By-Laws.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. 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 the file number in the caption above and should be submitted by July 28, 1995.

#### V. Commission's Findings and Order Granting Accelerated Approval

The Commission finds that approval of the proposed rule change is consistent with the Act and the rules and regulations thereunder, and, in particular, with the requirements of Section 15A(b)(11) of the Act, which provides that the rules of the NASD relating to quotations must be designed to produce fair and informative quotations, prevent fictitious or misleading quotations, and promote

orderly procedures for collecting, distributing, and publishing quotations.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing notice of the filing thereof. Accelerated approval of the NASD's proposal is appropriate to ensure continuity in the Service's operation as an electronic quotation medium that supports NASD members' market making in these securities and that facilitates price discovery and the execution of customers' orders at the best available price. Additionally, continued operation of the Service will materially assist the NASD's surveillance of its members trading in OTC Equities that are eligible and quoted in the Service, and in non-Tape B securities that are listed on regional exchanges and quoted in the OTCBB by NASD members.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for an interim period through September 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-16712 Filed 7-6-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-35922; File No. 10-100]

### Exempted Exchanges; AZX, Inc.; Amendment to Application for Exemption From Registration as an Exchange Under Section 5 of the Securities Exchange Act of 1934; Request for Comments

June 30, 1995.

#### I. Introduction

AZX, Inc., formerly known as Wunsch Auction Systems, Inc., operates the Arizona Stock Exchange ("AZX"), a computerized, single-price auction system that facilitates trading of registered equity securities by broker-dealers and institutions. AZX's single-price auctions are conducted outside the regular trading hours of the New York Stock Exchange ("NYSE"), at 5:00 p.m. (ET) each trading day. AZX operates pursuant to the terms and conditions of a Commission order ("exemption order") granting AZX a "limited volume" exemption from registration as a national securities exchange,<sup>1</sup> and a staff no-action letter with respect to the non-registration of AZX as a broker-

dealer, clearing agency, transfer agent, and exclusive securities information processor.<sup>2</sup> In the exemption order, the Commission cited AZX's off hours operation as one of the factors that justified a prediction that AZX would have a limited volume of trading.<sup>3</sup>

On June 2, 1995, AZX, Inc. filed with the Commission, pursuant to Rule 6a-1 under the Act,<sup>4</sup> an amendment to its application for exemption from registration as a national securities exchange. In its amendment, AZX, Inc. proposes to operate AZX during regular trading hours.<sup>5</sup> Under the proposal, AZX would conduct one additional daily auction, at a yet-to-be chosen fixed time between 9:45 and 10:00 a.m. (ET), in Nasdaq National Market securities.<sup>6</sup> AZX initially plans to trade only 15 of the approximately 4,140 Nasdaq National Market securities, but will expand as demand warrants.

The Commission is soliciting public comment on whether it is appropriate to amend the exemption order to reflect AZX's proposed morning trading session in Nasdaq National Market securities.

#### II. The Morning Trading Session

AZX's proposed morning auction is identical to AZX's current evening auction in terms of its: (1) Participation criteria; (2) means of access to the system; (3) classification and visibility of orders; (4) algorithm for discovering the price at which orders will be executed (the "equilibrium" or "auction" price); (5) confirmation, clearance and settlement of matched transactions; and (6) commission structure.

The proposed morning trading auction will differ in terms of:

- *Eligible securities.* Securities eligible to be traded in the morning auction will be limited to Nasdaq National Market securities. Both Nasdaq National Market and exchange-listed

<sup>2</sup> Letter regarding Wunsch Action Systems, Inc. (February 28, 1991) ("no-action letter"). The no-action letter also provided AZX's original crossing broker, Bankers Trust Brokerage Corporation ("BTBC") with relief with respect to non-registration as an exchange, clearing agency, transfer agent, and exclusive securities information processor. BTBC was replaced as AZX's crossing broker by Investment Technology Group, Inc. ("ITG, Inc.") in February 1995.

<sup>3</sup> The other factors cited by the Commission in the exemption order that justified a prediction of limited volume were the relative infrequency of the auctions and the absence of participation by broker-dealers with market-making obligations. 56 FR 8377, 8380.

<sup>4</sup> 17 CFR 240.6a-1.

<sup>5</sup> "Regular trading hours" refers to the time period in which the NYSE permits trading—9:30 a.m. to 4:00 p.m. (ET) each trading day.

<sup>6</sup> Nasdaq National Market securities were formerly known as "Nasdaq/MNS" securities.

<sup>1</sup> Securities Exchange Act Release No. 28899 (February 20, 1991), 56 FR 8377.