

a month, and may be no less than 30 seconds.

### III. Discussion

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 exchange, and, in particular, with Section 6(b)(5) of the Act, in that the proposal is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Commission continues to believe that the pricing and execution procedures of Enhanced SuperMAX and Timed Enhanced SuperMAX are consistent with the maintenance of fair and orderly auction markets on national securities exchanges. The Commission asked the Exchange to monitor the operation of the systems and determine their effectiveness and to submit a report to the Commission describing its experience with the pilot program.<sup>10</sup> While the Exchange submitted a report on August 30, 1996, the Commission has requested and the Exchange has agreed to submit, by January 31, 1997, certain supplemental data regarding the pilot program.

The Commission believes that this additional data and conclusions reached therefrom will be critical in determining whether to further extend or permanently approve the program. Moreover, extending the effectiveness of the pilot program until March 1, 1997 will give the Commission an opportunity to carefully and comprehensively evaluate the information provided by the Exchange. Accordingly, the Commission believes it is reasonable to extend the Enhanced SuperMAX and Timed Enhanced SuperMAX pilot program until March 1, 1997, and to request that the Exchange submit additional data to the Commission by January 31, 1997.

Any requests to modify this pilot program, extend its effectiveness, or to seek permanent approval for the pilot program should be submitted to the Commission by January 31, 1997 as a proposed rule change pursuant to Section 19(b) of the Act.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the

Federal Register. Amendment No. 2 requests that rather than being approved on a permanent basis, that the Enhanced SuperMAX and Timed Enhanced SuperMAX features of the SuperMAX system be approved through March 1, 1997, which will permit the pilot program to remain in effect without interruption. In addition, the Exchange has represented that no problems have arisen and no complaints have been received concerning the pilot program since its implementation.<sup>11</sup> Accordingly, the Commission believes there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act, to approve Amendment No. 2 on an accelerated basis.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submission should refer to File No. SR-CHX-96-26 and should be submitted by January 28, 1997.

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-CHX-96-26), as amended, is approved, and accordingly, that the pilot program is extended until March 1, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

<sup>11</sup> Telephone conversation between David T. Rusoff, Esq. Foley & Lardner, and Janet Russell-Hunter, Special Counsel, Office of Market Supervision, Division of Market Regulation, SEC, on December 23, 1996.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.20-3(a)(12).

Margaret H. McFarland,  
Deputy Secretary.  
[FR Doc. 97-237 Filed 1-6-97; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. 34-38097; File No. SR-NASD-96-45]

### Self-Regulatory Organizations; Notice and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Small Order Execution System Tier Size Classifications

December 30, 1996.

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 December 18, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") 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.

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

The NASD is submitting this filing to effectuate The Nasdaq Stock Market, Inc.'s ("Nasdaq") periodic reclassification of Nasdaq Market ("NNM") securities into appropriate tier sizes for purposes of determining the maximum size order for a particular security eligible for execution through Nasdaq's Small Order Execution System ("SOES") and the minimum quote size requirements for Nasdaq market makers in NNM securities. Specifically, under the proposal, 762 NNM securities will be reclassified into a different SOES tier size effective January 2, 1997. Since the NASD's proposal is an interpretation of existing NASD rules, there are no language changes.

#### 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.

<sup>10</sup> See Securities Exchange Act Release No. 36027, supra note 6.

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

The purpose of the rule change is to effectuate Nasdaq's periodic reclassification of NNM securities into appropriate tier sizes for purposes of determining the maximum size order for a particular security eligible for execution through SOES and the minimum quote size requirements for Nasdaq market in NNM securities. Nasdaq periodically reviews the SOES tier size applicable to each NNM security to determine if the trading characteristics of the issue have changed so as to warrant a tier size adjustment. Such a review was conducted using data as of September 30, 1996, pursuant to the following established criteria:<sup>1</sup>

NNM securities with an average daily non-block volume of 3,000 shares or more a day, a bid price less than or equal to \$100, and three or more market makers are subject to a minimum quotation size requirement of 1,000 shares and a maximum SOES order size of 1,000 shares;

NNM securities with an average daily non-block volume of 1,000 shares or more a day, a bid price less than or equal to \$150, and two or more market makers are subject to a minimum quotation size requirement of 500 shares and a maximum SOES order size of 500 shares; and

NNM securities with an average daily non-block volume of less than 1,000 shares a day, a bid price less than or equal to \$250, and less than two market makers are subject to a minimum quotation size requirement of 200 shares and a maximum SOES order size of 200 shares.

Pursuant to the application of this classification criteria, 762 NNM securities will be reclassified effective January 2, 1997. These 762 NNM securities are set out in the NASD's *Notice To Members 96-88* (December, 1996).

In ranking NNM securities pursuant to the established classification criteria, Nasdaq followed the changes dictated by the criteria with three exceptions. First an issue was not moved more than one tier size level. For example, if an issue was previously categorized in the 1,000-share tier size, it would not be permitted to move to the 200-share tier even if the reclassification criteria showed that such a move was warranted. In adopting this policy, Nasdaq was attempting to maintain adequate public investor access to the market for issues in which the tier size level decreased and help ensure the ongoing participation of market makers

<sup>1</sup> The classification criteria are set forth in NASD Rule 4613(a)(2) and the footnote to NASD Rule 4710(g).

in SOES for issues in which the tier size level increased. Second, for securities priced below \$1 where the reranking called for a reduction in tier size, the tier size was not reduced. Third, for the top 50 Nasdaq securities based on market capitalization, the SOES tier sizes were not reduced regardless of whether the reranking called for a tier-size reduction.

The NASD believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) requires, among other things, that the rules of the NASD governing the operation of The Nasdaq Stock Market be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. The NASD believes that the reassignment of NNM securities within SOES tier size levels and minimum quotation size levels will further these ends by providing an efficient mechanism for small, retail investors to execute their orders on Nasdaq and by providing investors with the assurance that they can effect trades up to a certain size at the best prices quoted on Nasdaq.

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

The NASD believes that the proposed 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*

Comments were neither solicited nor received.

*III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action*

The proposed rule change has become effective immediately pursuant to Section 19(b)(3)(A)(i) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4 because the reranking of NNM securities into appropriate SOES tier sizes was done pursuant to the NASD's stated policy and practice with respect to the administration and enforcement of two existing NASD rules. Further, in the SOES Tier Size Order, the Commission requested that the NASD provide this information as an interpretation of an existing NASD rule under Section 19(b)(3)(A) of the Act.

*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 File No. SR-NASD-96-45 and should be submitted by January 28, 1997.

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

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 97-236 Filed 1-6-97; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-38101; File No. SR-NASD-96-58]

**Self-Regulatory Organizations; Notice 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 March 31, 1997**

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 December 27, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") 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.

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