

*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.

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[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).

### 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 securities traded over-the-counter that are neither listed on The Nasdaq Stock Market<sup>SM</sup> nor on a registered 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 II<sup>TM</sup> authorized devices. 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 an interim approval that expires on December 31, 1996.<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 March 31, 1997. 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 Service.<sup>4</sup> For the month ending November, 1996, the Service reflected the market making positions of 411 NASD member firms displaying quotations/indications of interest in approximately 5,700 OTC Equities.

During the proposed extension, unregistered foreign securities and American Depositary Receipts (collectively, "Foreign Equity Securities") 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 unregistered Foreign Equity Securities will remain indicative.

In conjunction with the launch of the Service in 1990, the NASD implemented a filing requirement (currently under NASD Rule 6740) and review procedures to verify member 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 self-regulatory 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, including those related to the market structure requirements mandated by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Reform Act") 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 this proposed rule change is consistent with Sections 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 March 31, 1997 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

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

<sup>2</sup> With the Commission's 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.

<sup>3</sup> Securities Exchange Act Release No. 37387 (June 28, 1996), 61 FR 36098.

<sup>4</sup> Securities Exchange Act Release No. 30766 (June 1, 1992), 57 FR 24281. See also Securities Exchange Act Release No. 34956 (November 9, 1994), 59 FR 59808 providing notice of Amendment No. 1 to the proposed rule change.

<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 for penny stocks, 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).

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 December 31, 1996. 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 5,700 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 transactional data now reported by member firms pursuant to NASD Rule 6600.

#### 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, 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 in the Commission's Public Reference Room. Copies of the 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-58 and should be submitted by January 28, 1997.

#### 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 rule 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. The Commission finds that approval of this proposed rule change to continue operation of the pilot program is appropriate. The Commission has solicited and continues to solicit comments from the OTCBB Service. An extension of the pilot program will provide the Commission with sufficient time to consider the issues raised by the various interested parties.

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 OTC Equities 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 trading in OTC Equities that are quoted in the Service, including certain non-Tape B securities that are listed on regional exchanges and quoted in the Service.

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 March 31, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

Margaret H. McFarland,

*Deputy Secretary.*

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[Release No. 34-38095; File No. SR-NYSE-96-39]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Extending the Current \$400,000 Limit on Transaction Charges through 1997

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 New York Stock Exchange, Inc. ("Exchange") 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 self-regulatory organization. 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

In January 1996, the NYSE implemented a rate revision to its equity transaction charges. The revision included the elimination of all systems credits, a reduction of charges for shares 5,000 and under, the elimination of charges for non-market-maker system orders from 100 to 2,099 shares, the elimination of the growth limitation of 4% over 1988 levels, and the implementation of a monthly \$400,000 transaction charge cap per firm, a limitation which would be indexed annually to average daily volume, and would be removed January 1, 1999.<sup>1</sup> The proposed revision for the 1997 transaction charge extends the current \$400,000 cap rather than raising the cap based on the increase in volume from 1995 to 1996.

#### 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 self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the

<sup>1</sup> Securities Exchange Act Release No. 36465 (November 8, 1995), 60 FR 57473 (November 15, 1995).

<sup>6</sup> 17 CFR 200.30-3(a)(12).