

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

1. Purpose

The purpose of the proposed rule change is to provide an exemption from the Exchange's SRO fee for certain members. The Exchange's SRO fee applies to members and members organizations and helps recoup costs incurred by the Exchange in performing its self-regulatory function. The Exchange proposes to exempt inactive organizations² from this fee because the Exchange does not incur any significant costs for regulating these firms.

An inactive organization is defined as an organization that has no securities transaction revenue, as initially determined by its most recent annual FOCUS report, so long as the organization continues to have no such revenue each month.³ For inactive organizations which do not file FOCUS reports with the Exchange, such as when the CHX is not the Designated Examining Authority for the firm, each organization must still make such filings with the Exchange to support its contention that it is an inactive organization. If appropriate documentation is not received from the organization, the Exchange will impose the SRO fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act⁴ in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and persons using its facilities.

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

The Exchange does not believe the proposed rule change will impose any burden on competition.

²The Commission notes that the phrase "inactive organizations" includes both inactive members and inactive member organizations that meet the definition of "inactive organization" as noted in footnote number 1. Phone conversation between David Rusoff, Attorney, Foley & Lardner, and Heather Seidel, Attorney, Market Regulation, Commission, on March 7, 1997.

³This definition of "inactive organization" is the same as the definition for the "inactive organization" exemption from the Exchange's examination fee, section (p) under the CHX Membership Dues and Fee Schedule. Phone conversation between David Rusoff, Attorney, Foley & Lardner, and Heather Seidel, Attorney, Market Regulation, Commission, on March 7, 1997.

⁴15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

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

The proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act⁵ and subparagraph (e)(2) of Rule 19b-4⁶ thereunder, in that the proposal establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes 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, 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CHX-97-05 and should be submitted by April 10, 1997.

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

Jonathan G. Katz,

Secretary.

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⁵15 U.S.C. 78s(b)(3)(A).

⁶17 CFR 240.19b-4(e)(2).

[Release No. 34-38402; File No. SR-NASD-97-19]

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

March 14, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder, notice is hereby given that on March 7, 1997, 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 National 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"). Specifically, under the proposal, 692 NNM securities will be reclassified into a different SOES tier size effective April 1, 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.

¹15 U.S.C. 78s(b)(1)(1988).

²17 CFR 240.19b-4 (1991).

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. 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 December 31, 1996, pursuant to the following established criteria:³

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, 692 NNM securities will be reclassified effective April 1, 1997. These 692 NNM securities are set out in the NASD's Notice To Members 97-17.⁴

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 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.⁵ Section 15A(b)(6)⁶ requires, among other things, that the rules of the NASD governing the operation of Nasdaq 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 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 on March 7, 1997, pursuant to Section 19(b)(3)(A)(i) of the Act⁷ and subparagraph (e) of Rule 19b-4⁸ thereunder, 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 administrative 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.⁹

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 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-97-19 and should be submitted by April 10, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Jonathan G. Katz,
Secretary.

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[Release No. 34-38399; File No. SR-NASD-97-18]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by National Association of Securities Dealers, Inc. Relating to Amendments to the Corporate Financing Rule, The Nasdaq Stock Market Rules, and Over-the-Counter Bulletin Board Rules to Effect Compliance With SEC Regulation M

March 14, 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 March 6, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule and on March 10, 1997, the Association filed Amendment

³ The classification criteria is set forth in NASD Rule 4613(a)(2) and the footnote to NASD Rule 4710(g).

⁴ NASD To Members 97-17 (March 1997).

⁵ 15 U.S.C. 78o(b)(6).

⁶ *Id.*

⁷ 15 U.S.C. 78s(b)(3)(A)(i).

⁸ 17 CFR 240.19b-4(e).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 200.30-3(a)(12).