

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).

No. 1. The proposed rule change and Amendment No. 1 are 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. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

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

NASD Regulation is proposing to amend the Corporate Financing Rule in Rule 2710, the Nasdaq Rules, and the Over-the-Counter Bulletin Board Rules of the Association to effect compliance with the Commission's Regulation M. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

2700. SECURITIES DISTRIBUTIONS

2710. Corporate Financing Rule—Underwriting Terms and Arrangements

(a) No change.

(b) Filing Requirements

(1) through (10) No change.

(11) Request for Underwriting Activity Report

Notwithstanding the availability of an exemption from filing under subparagraph (b)(7) of this Rule, a member acting as a manager (or in a similar capacity) of a distribution of a publicly traded subject *security* or reference security that is subject to SEC Rule 101 shall submit a request to the Corporate Financing Department for an Underwriting Activity Report with respect to the subject and/or reference security in order to facilitate compliance with SEC Rules 101, 103, or 104, and other distribution-related Rules of the Association. The request shall be submitted at the time a registration statement or similar offering document is filed with the Department, the SEC, or other regulatory agency or, if not filed with any regulatory agency, at least two (2) business days prior to the commencement of the restricted period under SEC Rule 101. The request shall include a copy of the registration statement or similar offering document (if not previously submitted pursuant to subparagraph (b)(5) of this Rule). If no member is acting as managing underwriter of such distribution, each member that is a distribution participant or an affiliated purchaser shall submit a request for an Underwriting Activity Report, unless another member has assumed responsibility for compliance

with this subparagraph. For purposes of [this] subparagraphs (b) (11) and (12), SEC Rules 100, 101, 103, and 104 are rules of the Commission adopted under Regulation M and the following terms shall have the meanings as defined in SEC Rule 100: "distribution," "distribution participant," "reference security," "restricted period," and "subject security."

(12) Submission of Pricing Information

A member acting as a manager (or in a similar capacity) of a distribution subject to subparagraph (b)(11) of securities that are listed on a national securities exchange or are considered "activity-traded" under SEC Rule 101 shall provide written notice to the Market Regulation Department of NASD Regulation, Inc., no later than the close of business the day the offering terminates, that includes the date and time of the pricing of the offering, the offering price, and the time the offering terminated, which notice may be submitted on the Underwriting Activity Report.

(c) No change.

4600. NASDAQ MARKET MAKER REQUIREMENTS

4614. Stabilizing Bids

(a) No change.

(b) Eligibility

Only one market maker in a[n issue] security may enter a stabilizing bid.

(c) Limitations on Stabilizing Bids—No change.

(d) Submission of Request to Association

(1) A market maker that wishes to enter a stabilizing bid shall submit a request to Nasdaq Market Operations for the entry [in the] on Nasdaq [quotation display] of a one-sided bid identified as a stabilizing bid. The market maker shall confirm its request in writing no later than the [end of] *close of business* the day [on which] the stabilizing bid is entered by submitting an Underwriting Activity Report to Nasdaq Market Operations that includes the information required by subparagraph (d)(2).

(2) In lieu of submitting the Underwriting Activity Report as set forth in subparagraph (d)(1), the market maker may provide written confirmation to Nasdaq Market Operations that shall include:

(A) and (B)—No change.

(C) The date and time that an identifier should be included on [the] Nasdaq [quotation display]; and

(D) No change.

4619. Withdrawal of Quotations and Passive Market Making

(a)–(c) No change.

(d) Excused withdrawal status or passive market maker status may be granted to a market maker that is a distribution participant (or, in the case of excused withdrawal status, an affiliated purchaser) in order to comply with SEC Rules 101, 103, or 104 under the Act on the following conditions:

(1) A member acting as a manager (or in a similar capacity) of a distribution of a Nasdaq security that is a subject security or reference security under SEC Rule 101 and any member that is a distribution participant or [that is] an affiliated purchaser in such a distribution that does not have a manager shall provide written notice to Nasdaq Market Operations and the Market Regulation Department of NASD Regulation, Inc. no later than the business day prior to the first entire trading session of the one-day or five-day restricted period under SEC Rule 101, unless later notification is necessary under the specific circumstances.

(A) The notice required by subparagraph (d)(1) of this Rule shall be provided by submitting a completed Underwriting Activity Report that includes a request on behalf of each market maker that is a distribution participant or an affiliated purchaser to withdraw the market maker's quotations, or that includes a request on behalf of each market maker that is a distribution participant (or an affiliated purchaser of a distribution participant) that its quotations be identified as those of a passive market maker, and includes the contemplated date and time of the commencement of the restricted period.

(B) The managing underwriter shall advise each market maker that it has been identified as a distribution participant or an affiliated purchaser to Nasdaq Market Operations and that its quotations will be automatically withdrawn or identified as passive market maker quotations, unless a market maker that is a distribution participant (or affiliated purchaser of a distribution participant) notifies Nasdaq Market Operations as required by subparagraph (d)(2), below.

(2) A market maker that has been identified to Nasdaq Market Operations as a distribution participant (or an affiliated purchaser of a distribution participant) shall promptly notify Nasdaq Market Operations and the manager of its intention not to participate in the prospective distribution or not to act as a passive market maker in order to avoid having

its quotations withdrawn or identified as the quotations of a passive market maker [, or in order to have its excused withdrawal status rescinded].

(3) No change.

(4) No change.

(5) *A member acting as a manager (or in a similar capacity) of a distribution subject to subparagraph (d)(1) of this rule shall submit a request to Nasdaq Market Operations and the Market Regulation Department of NASD Regulation, Inc. to rescind the excused withdrawal status or passive market making status of distribution participants and affiliated purchasers, which request shall include the date and time of the pricing of the offering, the offering price, and the time the offering terminated, and, if not in writing, shall be confirmed in writing no later than the close of business the day the offering terminates. The request required by this subparagraph may be submitted on the Underwriting Activity Report.*

4623. Penalty Bids and Syndicate Covering Transactions

(a) No change.

(b) No change.

(c) Notwithstanding paragraph (a), a market maker may request that its quotation be identified as a penalty bid on Nasdaq display by providing notice to Nasdaq Market Operations, which notice shall include the date and time that the penalty bid identifier should be entered on Nasdaq and, if not in writing, shall be confirmed in writing no later than the [end of the day on which] *close of business the day* the penalty bid identifier is entered on Nasdaq.

(d) No change.

6500. OTC BULLETIN BOARD SERVICE

6540. Requirements Applicable to Market Makers

(a) No change.

(b) No change.

(1) Permissible Quotation Entries

(A)–(C) No change.

(D) Any member that intends to be a distribution participant in a distribution of securities subject to SEC Rule 101, or is an affiliated purchaser in such distribution, and is entering quotations in an OTCBB-eligible security that is the subject *security* or reference security of such distribution shall, unless another member has assumed responsibility for compliance with this paragraph:

(i) No change.

(ii) withdraw all quotations in the OTCBB-eligible security to comply with the applicable restricted period under SEC Rule 101 and not enter a stabilizing

bid pursuant to SEC Rule 104 in the OTCBB; [and]

(iii) provide written notice to the Corporate Financing Department of NASD Regulation, Inc. of its intention to impose a penalty bid or to conduct syndicate covering transactions pursuant to SEC Rule 104 prior to imposing the penalty bid or engaging in the first syndicate covering transaction. Such notice shall include information as to the date the penalty bid or first syndicate covering transaction will occur and the amount of the syndicate short position[.] ; and

(iv) provide written notice to the Market Regulation Department of NASD Regulation, Inc. by the close of business on the day the offering terminates that includes the date and time of the pricing of the offering, the offering price, and the time the offering terminated.

(E) The written notice required by subparagraphs (b)(1)(D)(i), [and] (iii) , and (iv) of this rule may be submitted on the Underwriting Activity Report provided by the Corporate Financing Department of NASD Regulation, Inc. by including the information required by those subparagraphs.

(F) For purposes of subparagraph (b)(1)(D), SEC Rules 100, 101, 103, and 104 are rules of the Commission adopted under Regulation M and the following terms shall have the meanings as defined in SEC Rule 100: “affiliated purchaser,” “distribution,” “distribution participant,” “penalty bid,” “reference security,” “restricted period,” “stabilizing,” “subject security,” and “syndicate covering transaction.”

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 SEC has approved, effective March 4, 1997, amendments to the NASD rules regarding Corporate

Financing, The Nasdaq Stock Market, Inc. (“Nasdaq”), and the OTC Bulletin Board (“OTCBB”) that are designed to assist members in complying with SEC Regulation M that became effective on that date.¹ In general, the amendments to NASD rules establish a new requirement for members to obtain an Underwriting Activity Report from the Corporate Financing Department of NASD Regulation, Inc. (“NASD Regulation”) with respect to a proposed distribution subject to SEC Rule 101; modify current Nasdaq requirements with respect to the entry of a stabilizing or penalty bid and requests for excused withdrawal of quotations or designation of quotations as those of a passive market maker; and establish new requirements for notification with respect to penalty bids and syndicate covering transactions for Nasdaq and OTCBB securities.

The NASD is proposing to amend the rules approved by the SEC on March 4, 1997 to require that members provide notification to the Association of the date and time of the pricing of an offering, the offering price, and the time the offering terminated with respect to offerings of Nasdaq and OTCBB securities, exchange-listed securities, and securities considered “actively-traded” under SEC Rule 101 of Regulation M. In addition, the NASD is proposing to amend Rule 4619 of the Nasdaq rules to clarify the applicability of the provision to affiliated purchasers of a distribution participant. Other amendments are proposed to Rules 4614, 4623, 4619 and 6540 to make nonsubstantive corrections to the language of the rules.

The Nasdaq Rules. The NASD is proposing to amend subparagraph (d)(1) of Rule 4619 to require that the notice to be submitted by a member to request excused withdrawal or passive market making status on the part of distribution participants and affiliated purchasers should be directed to both Nasdaq Market Operations and the Market Regulation Department of NASD Regulation. Where the required notice is submitted electronically to the Association, it will automatically be received at both these locations. Hard copy submissions of the notice will be required to be faxed to both Departments.

Subparagraphs (d)(1) (A) and (B) of Rule 4619 are proposed to be amended to clarify that an affiliated purchaser of a distribution participant, as compared to an affiliated purchaser of the issuer, is permitted to engage in passive market

¹ Securities Exchange Act Release No. 38360 (March 4, 1997).

making. Where a market maker is an affiliated purchaser of the issuer only, the market maker will not be permitted to engage in passive market making under SEC Rule 103, as SEC Rule 102 does not include an exception for passive market making activity. However, a market maker that is affiliated with a distribution participant, *i.e.*, a member that is a distribution participant is affiliated with another non-participating market maker, can rely on the exception from SEC Rule 101 for passive market making.

The NASD is also proposing to adopt new subparagraph (d)(5) of Rule 4619 to require that the managing underwriter submit a request to Nasdaq Market Operations and the Market Regulation Department of NASD Regulation to terminate the excused withdrawal status or passive market making status of distribution participants and affiliated purchasers. It is anticipated that the request will be by telephone to the staff of the Market Regulation Department and the provision requires that it be confirmed in writing by close of business on the day the offering is terminated. The request must include the date and time of the pricing of the offering, the offering price, and the time the offering terminated. The member may use an Underwriting Activity Report to submit its request.

Paragraph (c) of Rule 4623, relating to penalty bids and syndicate covering transactions, is proposed to be amended to make its language consistent with other provisions in requiring that the member's request for an identifier for a penalty bid be received no later than the close of business the day the penalty bid identifier is entered on Nasdaq.

OTCBB Rules. Moreover, the NASD is proposing similar requirements with respect to OTCBB securities. Proposed amended Rule 6540 will require that a member provide written notice to the Market Regulation Department of NASD Regulation by close of business on the day the offering terminates that includes the date and time of the pricing of the offering, the offering price, and the time the offering terminated.

Corporate Financing Rule. Similar to requirements proposed with respect to Nasdaq and OTCBB securities, the NASD is also proposing to amend Rule 2710(b) to add new subparagraph (12) to require that a member acting as a manager (or in a similar capacity) of a distribution subject to subparagraph (b)(11) of Rule 2710 of securities that are listed on a national securities exchange or are considered "actively-traded" under SEC Rule 101 adopted under SEC Regulation M, shall provide written notice to the Market Regulation

Department of NASD Regulation by close of business on the day the offering terminates that includes the date and time of the pricing of the offering, the offering price, and the time the distribution terminated. Actively-traded securities, *i.e.*, securities with an Average Daily Trading Volume ("ADTV") of at least \$1 million and a public float value of at least \$150 million, are no longer subject to any restricted period under SEC Rule 101. Thus, in the normal course, the NASD is unlikely to receive any further information with respect to when the offering is priced and is terminated as the market makers participating in the offering need not submit a request for excused withdrawal or identification of quotations as those of a passive market maker under NASD Rule 4619. Information on the pricing of offerings of actively-traded securities is necessary, however, for the NASD to carry out its regulatory obligations to ensure compliance with the SEC's antifraud and antimanipulation rules and regulations and with the NASD's Free-Riding and Withholding Interpretation in IM-2110-1 and the directed commissions provision of Rule 2740. Similarly, such pricing information is necessary with respect to a distribution of securities listed on a national securities exchange in order to permit the NASD to carry out its regulatory obligations with respect to such offerings.

The provision applies to distributions of securities that are subject to new subparagraph (b)(11) that requires that a member acting as a manager (or in a similar capacity) of a distribution of securities subject to SEC Rule 101 submit a request to the Corporate Financing Department for an Underwriting Activity Report. If no member is acting as managing underwriter, each member that is a distribution participant or an affiliated purchaser is required to submit the request unless another member has assumed responsibility for compliance with the requirement. Proposed subparagraph (b)(12) provides that a member may use the Underwriting Activity Report to submit the required information on pricing to Market Regulation Department of NASD Regulation. In referencing the Underwriting Activity Report, the NASD includes under that umbrella different notification forms that may be used by members to submit information required by its rules to comply with SEC Regulation M. The Regulation M Trading Notification Form can be used by a member to submit the pricing

information required by subparagraph (b)(12) to Rule 2710, subparagraph (d)(5) of Rule 4619 of the Nasdaq rules, and subparagraph (b)(1)(D)(iv) of Rule 6540 of the OTCBB rules to Nasdaq Market Operations.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(2) of the Act² in that the proposed rule change will enforce and facilitate compliance by NASD members with the Securities Exchange Act Rules, in addition to compliance with the rules of the Association. In addition, the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act in that the proposed rule change to require that members submit pricing information with respect to distributions of securities not subject to a restricted period under SEC Rule 101, exchange-listed securities, and OTCBB securities will prevent fraudulent and manipulative acts and practices, promote just and equitable principals of trade, and protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulations 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. 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

² 15 U.S.C. 78o-3.

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 April 10, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the NASD' proposal is consistent with the Act and the rules and regulations thereunder applicable to a registered national securities association. Specifically, the provisions of Section 15A(b)(2) of the Act which requires that an association enforce compliance with Securities Exchange Act Rules in addition to the rules of the association. The Commission believes that the proposal will enforce and facilitate compliance by NASD members with the requirements of Regulation M, SEC Rules 100 through 105.

In addition, the Commission finds that the NASD's proposal is consistent with the provisions of Section 15A(b)(6) of the Act which requires, in part, that an association have rules that are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principals of trade, and in general, to protect investors. The Commission believes that the NASD's proposal is consistent with Section 15A(b)(6) of the Act in that the amendments to Nasdaq and OTCBB Rules, in addition to the establishment of a requirement to provide pricing information with respect to offerings of exchange-listed and "actively-traded" securities under SEC Rule 101, provide a regulatory framework that will assist members in complying with the obligations under Regulation M. The Commission, therefore, finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of filing thereof in the Federal Register.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³ that the proposed rule change be and hereby is approved. The proposed rule change is effective March 14, 1997, with the exception of the provisions of Rule 4623 and Rule 5460 that implement the notification requirements adopted under Regulation M Rule 104 with respect to penalty bids and syndicate covering transactions that will become effective on the date that the notification requirements under SEC Rule 104 become effective.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Jonathan G. Katz,

Secretary.

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[Release No. 34-38372; File No. SR-NYSE-97-04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to the Exchange's Allocation Policy and Procedures

March 7, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on February 21, 1997, as amended on March 3, 1997, the New York Stock Exchange, Inc. ("NYSE" or "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.² 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 Exchange, pursuant to Rule 19b-4 of the Act, submits a proposed rule change amending the NYSE's Allocation Policy and Procedures. The text of the proposed rule change is as follows [new text is italicized; deleted text is bracketed].

Allocation Policy and Procedures

* * * * *

Listing company input

[Listing on the New York Stock Exchange is a significant development for a company, and the assignment of a specialist to make a market in the company's shares via the allocation process is an important step. The listing

company may wish to communicate its views for consideration by the Allocation Committee in selecting the best possible specialist for the company's stock.

The Allocation Committee will consider a letter from the listing company requesting specific units and/or specifying particular expertise in one or more aspects of the specialist's role. While specialist performance continues to be the most significant criterion, the committee will use its professional judgment in giving appropriate weight to all relevant factors, including company letters, to determine the selection of a specialist unit.

From time to time a listing company may choose to interview specialist units. The Exchange takes a neutral position on this practice and as such will neither arrange interviews nor recommend units to be interviewed.]

Listing on the New York Stock Exchange is a significant development for a company, and the assignment of a specialist through the allocation process is an important step. The Exchange's Allocation Policy is intended to provide listing companies with a choice of alternatives as to how their specialist unit may be selected. The listing company may choose to have its specialist unit selected by the Allocation Committee, in accordance with the criteria specified in the Allocation Policy, and the exercise of the Committee's expert professional judgment. Alternatively, the listing company may choose to become more directly involved in the selection process. In that case, the company may request that the Allocation Committee select specialist units that would be appropriate to trade the company's stock, with the company then making the final selection from among the group of units as chosen by the Allocation Committee. Such a group shall consist of three, four, or five units, selected by the Committee as demonstrably deemed to be the most qualified to receive such allocation from among the units that apply, based upon the criteria set forth in this policy. These procedures shall apply to the allocation of a newly-listing company, as well as the reallocation of an already listed company.

Specialist Unit Selected by Allocation Committee. If the listing company so chooses, the Allocation Committee shall select the specialist unit to be allocated the company's stock based on the Committee's expert assessment of the type of specialist unit that would be most appropriate for the company, and the Committee's professional evaluation of performance data and other relevant

⁴ 17 CFR 200.30-3(a)(12) (1996).

¹ 15 U.S.C. 78s(b)(1):

² On March 3, 1997, the NYSE filed Amendment No. 1 to its proposal. See letter from James E. Buck, Senior vice President and Secretary, NYSE, to Ivette López Assistant director, Division of Market Regulation, SEC, dated February 28, 1997. In Amendment No. 1, the NYSE withdrew certain proposed amendments to the following sections of the NYSE's Allocation Policy and Procedures: I. Purpose; III. Allocation Panel, composition; IV. Allocation Criteria; and V. Policy Notes. *Id.* The Exchange has filed a separate proposal under Section 19(b)(2) of the Act to amend the above-referenced items. See File No. SR-NYSE-97-06.

³ 17 U.S.C. 78s(b)(2) (1988).