

managers of secondary offerings to be eligible to register as PMMs in such issues before the secondary offering is effective. The proposed amendment to Rule 4612(g) would only apply to members that are a PMM in 80% or more of the securities in which they are registered, however

Nasdaq believes the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and 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, by permitting managers and co-managers of secondary offerings who did not previously make a market in such issues to become PMMs in such issues prior to the effective date of the secondary offering, Nasdaq believes the proposed rule change will enhance market liquidity, facilitate greater competition among market makers, and promote the capital formation process. At the same time, given the inherent commitment of managers and co-managers to the stocks they underwrite, along with the requirement that such firms be a PMM in 80% or more of stocks in which they are registered under the proposal,³ Nasdaq does not believe the proposal will compromise the regulatory purposes underlying the "Secondary Offering PMM Delay Rule."

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

Nasdaq 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.

³ Of course, a firm is not precluded from being a manager or co-manager of a secondary offering if it is not a PMM in 80% or more of the stocks in which it makes a market.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

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 number SR-NASD-97-30 and should be submitted by June 6, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. (17 CFR 200.30-3(a)(1) (1989)).

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38610; File No. SR-NASD-97-31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to an Amendment to the NASD's Rule Governing Market Maker Registration

May 12, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and the National Association of Securities Dealers, Inc.'s ("NASD" or "Association") Plan of Allocation and Delegation of Functions by NASD to Subsidiaries, notice is hereby given that on April 24, 1997, The Nasdaq Stock Market, Inc. ("Nasdaq") 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 Nasdaq. 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

Nasdaq proposes to amend NASD Rule 4611(d) to permit managers and co-managers of an underwriting syndicate participating in a secondary offering of a security listed and traded on Nasdaq to register as a market maker in such issue on a same-day basis on the day of the secondary offering. (Additions are italicized; deletions are bracketed.)

* * * * *

NASD Rule 4611

(a)-(c) No change.

(d) A Nasdaq market maker may become registered in an issue already included in Nasdaq by entering a registration request via a Nasdaq terminal. If registration is requested in an issue that has been included in Nasdaq for more than five (5) days, and the requirements of paragraph (b) above are satisfied, registration shall become effective on the day after the registration request is entered. *Provided*, [If] however, *that same day registration is permissible for:*

(1) a Nasdaq market maker, registered in a security that is the subject of a publicly announced merger or acquisition offer with another Nasdaq issue, *who* seeks registration in the other merger or acquisition issue; [, same-day registration is permissible.]; *and*

(2) a manager or co-manager of an underwriting syndicate for a secondary offering of a security on the day of the secondary offering of that security.

(e)-(g) No change.

* * * * *

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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

NASD Rule 4611(d) provides that an NASD member may register as a Nasdaq market maker in an issue by entering a registration request "on-line" via a Nasdaq terminal. For issues that have been trading on Nasdaq for more than five days, however, "on-line" registrations are not effective until the day after the registration request is made ("One-Day Delay Rule"). This one-day delay for market maker registration in non-IPOs is designed to minimize the potential for "fair weather" market making. Specifically, the one-day delay helps to assure that members registering as market makers are making a legitimate commitment of their capital to the issue for the betterment of the market, not just to capture short-term trading profits during brief periods of favorable market conditions.

While Nasdaq continues to believe that the one-day delay in market maker registration serves to minimize the potential for "fair weather" market makers, there have been instances where managers and co-managers of an underwriting syndicate for a secondary offering have been precluded from trading the issue on the day of the secondary offering because they did not submit a market maker registration request on the day before the offering. Accordingly, in light of the inherent commitment of managers and co-managers of underwriting syndicates to their issues, the need for these members to make a market in the stock to manager their risk, and the additional liquidity and pricing efficiency that these market makers can provide, Nasdaq is proposing to amend NASD

Rule 4611(d) to permit managers and co-managers of a secondary offering to register in that issue on a same-day basis on the day of the secondary offering.

Nasdaq believes the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and 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, by permitting managers and co-managers of secondary offerings to become registered market makers in such issues on the day of the secondary offering, Nasdaq believes the proposal will enhance the liquidity and stability of the market, facilitate greater market maker competition, and promote the capital formation process by enabling managers and co-managers of secondary offerings to better manage their risks associated with the offering. At the same time, given the inherent commitment of managers and co-managers to the stocks they underwrite, Nasdaq does not believe that permitting managers and co-managers of secondary offerings to register in such issues on a same-day basis on the day of the offering will compromise the regulatory purposes underlying the "One-Day Delay Rule."

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

Nasdaq 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

(ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

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 number SR-NASD-97-31 and should be submitted by June 6, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority (17 CFR 200.30-3(a)(12) (1989)).

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38608; File No. SR-NASD-97-17]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Fees Charged for the Nasdaq Level 1 Service

May 12, 1997.

On March 3, 1997, the National Association of Securities Dealers, Inc. ("NASD") and the Nasdaq Stock Market, Inc. ("Nasdaq") (hereinafter referred to collectively as "Nasdaq" or the "Nasdaq Stock Market") submitted to the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b) of the Securities Exchange