

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

MBSCC advised participants of the proposed rule change by an administrative bulletin dated May 9, 1997. No written comments relating to the proposed rule change have been received. MBSCC will notify the Commission of any written comments received by MBSCC.

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

Within thirty-five 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 ninety 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 MBSCC 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, including whether the proposed rule change is consistent with the Act. 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, 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 MBSCC. All submissions should refer to the file number SR-MBSCC-97-10 and should be submitted by March 10, 1998.

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

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-39632; File No. SR-NASD-98-09]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Operation of the OTC Bulletin Board**

February 9, 1998.

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 February 3, 1998, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration or enforcement of an existing rule under § 19(b)(3)(A) of the Act, which renders the rule effective upon the Commission's receipt of this filing. 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 is proposing to effect the removal of quotations from the OTC Bulletin Board ("OTCBB") of certain American Depositary Receipts ("ADRs") representing underlying shares in Cifra, S.A. de D.V., a foreign private issuer organized under the laws of Mexico.

**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*

1. Purpose

This rule change is being filed to effect the removal of quotations from the OTCBB of certain ADRs representing underlying shares in Cifra, S.A. de D.V. ADRs ("Cifra"). As the Commission is well aware, the OTCBB is a quotation medium used by NASD members to quote securities not listed on Nasdaq or a national securities exchange. As originally developed, the OTCBB sought to provide increased transparency through a centralized electronic quotation system for all such OTC equity securities, including foreign equities and ADRs. As the Commission also is aware, ADRs are negotiable receipts usually issued by U.S. banks, which certify that a stated number of shares of a foreign private issuer have been deposited in the bank or its foreign affiliate or correspondent. The depositary banks maintain a registry of ADR holders, and, usually for a fee, monitor dividend declarations, collect and convert dividends to U.S. currency, and remit the dividends to U.S. shareholders. Thus ADRs provide benefits to U.S. shareholders by simplifying the transfer of interests in the underlying foreign securities as well as information and dividends by these foreign companies.

For some time, National Association of Securities Dealers, Inc. ("NASD") members have displayed quotations for Cifra's ADRs in the OTCBB pursuant to applicable NASD and SEC rules governing the display of quotations in quotation media such as the OTCBB.<sup>1</sup> The particular security that is the subject of this filing, identified with ticker symbol CFRAY, has been described on the OTCBB display screen as an ADR representing underlying Series B securities in Cifra. It is the understanding of Nasdaq staff that these particular ADR securities exist in what is known as an "unsponsored" ADR environment. That is, the ADRs representing the underlying shares came about as the result of several bank depositaries who operate such unsponsored programs for the benefit of shareholders without the cooperation of

<sup>1</sup> As of this filing, approximately thirteen (13) market makers are displaying priced or unpriced quotations in the OTCBB for this security. It is the understanding of Nasdaq staff that these same securities have been quoted in NQB's Pink Sheets, a quotation medium not affiliated with the NASD or Nasdaq.

the underlying issuer company.<sup>2</sup> Further, it is understood that on December 17, 1997, the shareholders of Cifra acted to amend the by-laws of Cifra to cancel Series A and Series B shares, and create a new Series V share. Specifically, the Series A and Series B shares changed into Series V shares on a one-for-one basis. It is further understood that the new Series V shares became the subject of a sponsored ADR facility, which Cifra has agreed to sponsor. Nasdaq believes that as a result of this exchange, shareholders of unsponsored Series B ADRs now hold, in effect, ADRs that represent Series V securities of Cifra.

Although one depository bank has taken steps to terminate its unsponsored program in the Series B ADRs (apparently due to that bank's involvement as depository for the new sponsored facility) Nasdaq is aware of several other banks issuing the unsponsored ADRs that intend to continue their unsponsored programs for Series B ADRs. On December 24, 1997, the NASD issued a Uniform Practice Code notice to notify broker-dealers and clearing entities of these events.

There are now two separate and identifiable ADR securities that, as Nasdaq understands, represent in fact the same Series V shares, albeit in different "multiples" or ratios.<sup>3</sup> While the unsponsored depository banks and shareholders may nominally refer to these programs as Series B ADR facilities, it is Nasdaq's understanding that all underlying shares, including those on deposit with these banks, are now Series V shares, and that this fact is understood by the parties involved.

While Nasdaq is not aware of any SEC or NASD rules that explicitly prohibit the simultaneous operation of multiple unsponsored ADR facilities with the same shares underlying, it is Nasdaq's understanding that the SEC has discouraged the operation of multiple facilities where there is both a sponsored and unsponsored facility operating at the same time. Nasdaq believes that this has been based, in part, on the potential for market disorder or investor confusion, especially when the rights provided by the unsponsored ADRs are not

<sup>2</sup>Such unsponsored programs do not necessarily need the consent of the underlying issuer. See e.g., Securities Act Release No. 6894; Exchange Act Release No. 29226 (May 23, 1991), at Section II.B.1. (Advance Notice of Possible Commission Action and Request for Information and Public Comment).

<sup>3</sup>The unsponsored ADRs had a ratio of 1:1, while the new sponsored facility has a ratio of 10 Series V shares for each ADR.

equivalent to those of the sponsored ADRs or the securities are not otherwise deemed fungible. In addition, Nasdaq believes that technically, what has been referred to as a "Series B ADR" can no longer exist in its current form given that no Series B shares underlie it. Nasdaq also believes that there may be issues of confusion with respect to facilitating the quotation and/or trading of these two securities simultaneously.<sup>4</sup> Nasdaq notes that the removal of what were formerly Series B ADRs from the OTCBB does not necessarily prohibit any future transactions in these securities, nor will it affect the ability of these securities to be quoted in another quotation medium.<sup>5</sup>

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) and (11) of the Act.<sup>6</sup> Section 15A(b)(6) requires, among other things, that the NASD's rules promote just and equitable principles of trade, facilities 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.

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

Nasdaq 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.

<sup>4</sup>To minimize confusion at the time of the exchange, Nasdaq amended the name of the security as it appears on the OTCBB display to delete reference to the Series "B" and to add the reference "UNSPON" to indicate that this security is the unsponsored form of the ADR.

<sup>5</sup>While it is the responsibility of the NASD to generally oversee and regulate members use and activity respecting quotations in any quotation medium, the NASD and Nasdaq cannot directly control the operation of quotation media other than the OTCBB. Unlike rules governing listings on Nasdaq, SEC and NASD rules governing the OTCBB do not currently provide the NASD or Nasdaq the authority to halt or prohibit trading of any non-Nasdaq security, with the limited exception of 10-day trading halts imposed by the SEC pursuant to Section 12(k) of the Act.

<sup>6</sup>15 U.S.C. § 78o-3.

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

The foregoing rule change is effective on filing pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration or enforcement of an existing rule. The NASD will implement the rule on February 28, 1998.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the 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, including whether the proposed rule change is consistent with the Act. 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 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 SR-NASD-98-09 and should be submitted by March 10, 1998.

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

**Margaret H. McFarland,**

**Deputy Secretary.**

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