outstanding voting securities other than those granted to its directors, officers, and employees pursuant to these three plans.

Applicant's Legal Analysis

1. Section 63(3) of the Act permits a BDC to sell its common stock at a price below current net asset value upon the exercise of any option issued in accordance with section 61(a)(3) of the Act.

2. Section 61(a)(3)(B) of the Act provides, in pertinent part, that a BDC may issue to its non-employee directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) the options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no market exists, the current net asset value of the voting securities; (c) the proposal to issue the options is authorized by the BDC's shareholders, and is approved by order of the SEC upon application; (d) the options are not transferable except for disposition by gift, will or intestacy; (e) no investment adviser of the BDC receives any compensation described in section 205(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (A) or (B) of that section; and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

3. In addition, section 61(a)(3)(B) of the Act provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of the BDC.

4. Applicant represents that the Amended Plan would comply with the requirements of section 61(a) (3) (B) of the Act. Applicant submits that the terms of the Amended Plan are fair and reasonable and do not involve overreaching of applicant or its shareholders. Applicant states that the Options would not be immediately exercisable and do not vest until the first anniversary of the date of the grant. Applicant asserts that under the Amended Plan, even if each of the current Non-Employee Directors is re-elected for a period of three years, the total amount of common stock issuable under the Options would be 164,000 shares (28,000 shares of which would not yet be exercisable) or 0.44% of applicant's outstanding common stock. In addition, applicant states that the total number of shares of common stock issuable under the Options that may be granted in any one year to the current Non-Employee Directors represents .08% of applicant's outstanding common stock. Applicant asserts that, given the small number of common stock issuable upon exercise of the Options, the exercise of the Options pursuant to the Amended Plan will not have a substantial dilutive effect on the net asset value of applicant's common stock. Applicant states that, the total amount of voting securities that would be issuable under the Amended Plan at the time of issuance would not exceed 20% of applicant's outstanding voting securities.

5. Applicant states that its directors are directly involved in the oversight of the applicant's affairs, and applicant relies on the judgment and experience of its directors. Applicant also states that Non-Employee Directors are involved in applicant's ongoing operations and marketing activities, and applicant's management regularly solicits Non-Employee Directors for their ideas and advice with respect to prospective investments, acquisitions, and operational matters. Applicant believes that the Options will provide additional incentives to Non-Employee Directors to remain on the Board. Applicant also believes that the Options provide a means for Non-Employee Directors to increase their ownership interests in the applicant, thereby further ensuring close identification of their interests with those of the applicant and its shareholders. Applicant asserts that incentives such as Options will maintain continuity in the Board's membership and help attract and retain highly experienced professionals that are critical to applicant's success as a BDC.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–14919 Filed 6–4–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40026, File No. SR–NASD–98–34]

Self-Regulatory Organizations; Order Granting Accelerated Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Cancellations and Suspensions for Failure To Comply With Arbitration Award

May 26, 1998.

On May 1, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] The filing was thereafter amended on May 4, 1998.[3] In its proposal, the Association sought approval of an amendment to its Code of Procedure, to permit members of the NASD Regulation, Inc. (''NASD Regulation'') Office of Hearing Officers to oversee non-summary proceedings involving cancellations and suspensions related to failure to comply with an arbitration award. Notice of the proposal, including Amendment No. 1 thereto, was published in the **Federal Register** on May 12, 1998 (''Notice'').[4] The Commission did not receive comment letters on the filing.

I. Introduction and Background

In connection with the recent reorganization of the Association following issuance of the *SEC Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions*[5] and the *Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and The Nasdaq*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Joan C. Conley, Corporate Secretary, NASD Regulation, Inc. to Katherine England, Assistant Director, Division of Market Regulation, Commission dated May 4, 1998.

[4] *See* Securities Exchange Act Release No. 39957 (May 1, 1998), 63 FR 26238 (File No. SR–NASD–98–34).

[5] Securities Exchange Act Release No. 37538 (Aug. 8, 1996) (SEC Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, *In the Matter of National Association of Securities Dealers, Inc.*, Administrative Proceeding File No. 3–9056). The order included fourteen undertakings (''Undertakings'') addressing actions to be taken by the Association in response to the findings of the Order.

Stock Market[6] on August 8, 1997, the Association revised a substantial portion of its Code of Procedure. Among those amendments were included changes to the summary and non-summary proceedings addressing (1) limitations of the activities of members experiencing financial or operational difficulties; (2) summary and non-summary suspension, cancellation, bar, limitation or prohibition on access to NASD services; (3) eligibility; and (4) exemptions from specific NASD rules. In approving these amendments, which consolidated, reorganized and clarified prior rules, the Commission specifically noted that the changes would ''assist the NASD in promulgating and applying on a consistent basis uniform standards for regulatory and other access issues, as well as instituting safeguards to ensure fair and evenhanded access to all services and facilities of the NASD, consistent with the 21(a) Report and the Undertakings [and] the Act * * *.''[7] The amendments to the Rules of the Association contained in the Association's current proposal supplement the earlier revisions approved by the Commission in SR–NASD–97–28.[8]

II. Description of the Proposal

The propose of the Association's proposal is to change the composition of the hearing panels used for non-summary proceedings in which the Association seeks to suspend or cancel the membership of a member or the registration of a person for failure to comply with an arbitration award or a settlement agreement related to NASD arbitration or mediation. Currently, these proceedings must be heard by a hearing panel composed of one current NASD Regulation director plus at least one other current or former NASD or NASD Regulation board member.[9] Under the proposal, these procedures would instead by heard by a single member of the Office of Hearing Officers, who would be appointed by the Chief Hearing Officer.[10] The Officer of Hearing Officers is an independent office within NASD Regulation whose purpose is to provide a group of independent and professional hearing officers (comprised of attorneys with appropriate experience and training) to preside over all formal NASD disciplinary proceedings.[11] Their jurisdiction will be extended to non-summary proceedings upon approval of the current proposal.

III. Discussion

As discussed below, the Commission has determined at this time to approve the Association's proposal. The standard by which the Commission must evaluate a proposed rule change is set forth in Section 19(b) of the Act. The Commission must approval a proposed NASD rule change if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that govern the NASD.[12] In evaluating a given proposal, the Commission examines the record before it and all relevant factors and necessary information. In addition, Section 15A of the Act establishes specific standards for NASD rules against which the Commission must measure the proposal.[13]

The Commission has determined that substitution of a single hearing officer instead of two board members is warranted because of the advantages to such substitution. First, the proposed rule change does not alter the right to a hearing concerning a failure to pay an arbitration award; it merely alters the composition of the hearing panel. Moreover, it would be considerably more efficient to have one hearing officer conduct the hearing on these issues and render a decision, rather than the multiple Board members required by the current version of Rule 9514. The members of the Board, who serve the Association on a part-time basis, have many constraints upon their time. The attorneys comprising the Office of Hearing Officers, however, are full-time Association employees who primarily focus on NASD Regulation proceedings. In addition, the members of the Office of Hearing Officers are well-suited to resolve the issues presented in these types of hearings due to the training and experience gained in oversight of the NASD's disciplinary proceedings under the Rule 9200 Series. Finally, the issues to be resolved in the proceedings underlying this proposal are somewhat narrow, and generally limited to (i) whether the member or person paid the award in full or fully complied with the settlement agreement, (ii) whether the claimant has agreed to installment payments or has otherwise settled the matter, (iii) whether the member or person has filed a timely motion to vacate or modify the arbitration award and such motion has not been denied, (iv) whether the member or person has filed a petition in bankruptcy and the bankruptcy proceeding is pending, or the award or payment owed under the settlement agreement has been discharged by the bankruptcy court, and (v) whether the member or person is unable to pay the award.[14] All of these reasons indicate that the proposal is consistent with the Act, and ''should enhance both the fair and efficient operation of the NASD, and the dispassionate and fair application of the rules in the NASD's regulatory activities.[15]

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

In its filing, the NASD requested that the Commission find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. As discussed above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder. In addition, the Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval will benefit public interest and the protection of investors by enhancing the efficiency of the Association's procedures for suspending or canceling the membership of a member or the registration of a person for failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation. The current rule requiring current or former NASD Governors or NASD Regulation Directors to serve on such Hearing Panels is imposing a burden on the process due to the part-time nature of service on the governing boards and the amount of time necessary to resolve these types of disputes. The procedure needs to be changed quickly so that such persons will no longer be called upon to resolve these relatively narrow

[6] Report and Appendix to Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and The Nasdaq Stock Market (Aug. 8, 1996).

[7] Securities Exchange Act Release No. 38908 (August 7, 1987), 62 FR 43385, 43407 (August 13, 1997) (File No. SR–NASD–97–28).

[8] *Id.*

[9] *See* current Rule 9514.

[10] *See* proposed Rule 9514.

[11] Release No. 34–38908.

[12] 15 U.S.C. 78s(b).

[13] 15 U.S.C. 78*o*–3.

[14] The Commission has recognized that a bona fide inability to pay an arbitration award is an important consideration determining whether any sanction for failure to pay an arbitration award is excessive or oppressive. *See* In the Matter of the Application of Bruce M. Zipper, Securities Exchange Act Release No. 33376, Admin. Proc. File No. 3–7908. (Dec. 23, 1993).

[15] Release No. 34–38908.

disputes. Thus, the commission finds good causes to accelerate approval of the Association's proposal.

V. Conclusion

The Commission believes that the proposed rule change is consistent with the Act, and, particularly, with Section 15A thereof.[16] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation.[17]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NASD–98–34), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–14920 Filed 6–4–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40047; File No. SR–NASD–98–09]

Self-Regulatory Organizations; Notice of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. Relating to Trade Reporting Rules

May 29, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ''Act''),[1] notice is hereby given that on February 2, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change. Nasdaq filed an amendment to the proposed rule change on May 19, 1998. The proposed rule change, as amended, is 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 is proposing to amend various trade reporting rules of the Association. Specifically the proposal would: (1) Implement a new trade report modifier to identify trades effected at a prior reference price; (2) eliminate the 10,000 share limitation on individual trades that may be ''bunched'' for trade reporting purposes; (3) require electronic communications networks (''ECNs'') to be responsible for reporting all trades executed within the ECN; and (4) address riskless principal trades involving exchange-listed securities traded in the Third Market. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletion are in brackets.

* * * * *

4623. Electronic Communications Networks

(a) No Change.

(b) An electronic communications network that seeks to utilize the Nasdaq-provided means to comply with the electronic communications network display alternative shall:

(1)–(5) No Change.

(6) report all transactions executed by or through the electronic communications network, with the exception of transactions executed through an automated execution system operated by Nasdaq (e.g., SelectNet).

* * * * *

4632. Transaction Reporting

(a)(1) through (a)(8) No Change.

(9) All members shall append a trade report modifier as designated by the Association to transaction reports that reflect a price different from the current market when the execution is based on a prior reference point in time, which shall be accompanied by the prior reference time.

(b) through (f)(1)(C) No Change.

(D) Orders received or initiated by the reporting member which are impractical to report individually and are executed at the same price within 60 seconds of execution of the initial transaction; provided however, that no individual order of 10,000 shares or more may be aggregated in a transaction report and that the aggregated transaction report shall be made within 90 seconds of the initial execution reported therein. Furthermore, it is not permissible for a member to withhold reporting a trade in anticipation of aggregating the transaction with other transactions. *The limitation on aggregating individual orders of 10,000 shares or more for a particular security shall not apply on the first day of secondary market trading of an IPO for that security.*

Examples: No Changes.

(2) No Change.

* * * * *

4642. Transaction Reporting

(a)(1) through (a)(8) No Change.

(9) All members shall append a trade report modifier as designated by the Association to transaction reports that reflect a price different from the current market when the execution is based on a prior reference point in time, which shall be accompanied by the prior reference time.

(b) through (f)(1)(C) No Change.

(D) Orders received or initiated by the reporting member which are impractical to report individually and are executed at the same price within 60 seconds of execution of the initial transaction; provided however, that no individual of 10,000 shares or more may be aggregated in a transaction report and that the aggregated transaction report shall be made within 90 seconds of the initial execution reported therein. Furthermore, it is not permissible for a member to withhold reporting a trade in anticipation of aggregating the transaction with other transactions. *The limitation on aggregating individual orders of 10,000 shares or more for a particular security shall not apply on the first day of secondary market trading of an IPO for that security.*

(2) No Change.

* * * * *

4652. Transaction Reporting

(a)(1) through (a)(7) No Change.

(8) All members shall append a trade report modifier as designated by the Association to transaction reports that reflect a price different from the current market when the execution is based on a prior reference point in time, which shall be accompanied by the prior reference time.

(b) through (f) No Change.

* * * * *

6420. Transaction Reporting

(a) through (d)(3)(A) No Change.

(B) Exception: A ''riskless'' principal transaction in which a member [that is not a market maker in the security] after having received from a customer an order to buy, purchases the security as principal from another member or customer to satisfy the order to buy or, after having received from a customer an order to sell, sells the security as principal to another member or customer to satisfy the order to sell, shall be reported as one transaction in the same manner as an agency transaction, excluding the mark-up or mark-down. A riskless principal transaction in which a member purchases or sells the security on an exchange to satisfy a customer's order will be reported by the exchange and the member shall not report.

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[16] U.S.C. 78*o*–3.

[17] 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).