

equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Commission finds that the proposal will facilitate transactions in securities and protect investors and the public interest. The Commission believes that increasing to up to 100 the maximum number of options contracts on the Index executable through RAES should enable the Exchange to more effectively and efficiently manage order flow in options on the Index consistent with its obligations under the Act. Further, the Commission believes that the RAES order size limit of 100 contracts for the Index should result in the efficient and timely execution of customer orders. The Commission notes that it has approved similar proposals by the Exchange increasing the number of option contracts eligible for automatic execution to a maximum of 100 contracts.⁸

Based on representations from the CBOE, the Commission believes that increasing the size of orders on the Index eligible for execution through RAES will not expose the CBOE's options markets to risk of failure or operational breakdown. Specifically, the CBOE represents that the proposal will not impose any significant burden on the operation, security, integrity, or capacity of RAES.

IV. Conclusion

For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5).⁹

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-CBOE-99-06) is approved.

⁸ See Securities Exchange Act Release No. 38169 (January 14, 1997), 62 FR 3547 (January 23, 1997) (order approving an increase to the maximum size of interest rate option orders eligible for automatic execution to up to 100 contracts); Securities Exchange Act Release No. 39202 (October 3, 1997), 62 FR 53358 (October 14, 1997) (order approving proposal to allow the Exchange discretion to set the eligible order size for RAES orders to up to 100 contracts for options on the Dow Jones Industrial Average).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-15487 Filed 6-17-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41519; File No. SR-NASD-99-02]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Application of Certain NASD Rules to Limited Offerings Under SEC Rule 504, Securities Exempted Under the Securities Exchange Act of 1934, and Intra-State-Only Offerings

June 11, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 13, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary NASD Regulation, Inc. ("NASD Regulation"), 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 NASD Regulation. NASD Regulation amended the proposed rule change on May 24, 1999.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Suzanne Rothwell, Chief Counsel, Corporate Financing Department, NASD Regulation, to Joshua Kans, Attorney, Division of Market Regulation ("Division"), Commission, dated May 21, 1999 ("Amendment No. 1"). Amendment No. 1 modified the proposed rule change to in response to the Commission's recent amendment of Securities Act Rule 504. See Securities Act Release No. 7644 (February 25, 1999), 64 FR 11090 (March 8, 1999) (adopting amendment to Rule 504 under Regulation D, 17 CFR 230.504).

The NASD and the Commission clarified the purpose of this proposed rule change, the scope of the rules impacted by the proposed rule change, and the NASD's response to the Commission's amendment of Securities Act Rule 504 during telephone conversations between Suzanne Rothwell, NASD Regulation, and Joshua Kans, Commission, on February 1, February 8, May 12 and June 10, 1999.

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

NASD Regulation is proposing to amend NASD Conduct Rules IM-2110-1, 2710, and 2720 to clarify their application to offerings of securities made in reliance on the SEC's limited offering exemption provided by Rule 504 of Regulation D.⁴ The proposed amendments also would modify Rules 2710 and 2720 in other ways, and will affect the interpretation of several other NASD Rules. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

IM-2110-1. "Free-Riding and Withholding"

* * * * *

(I) Explanation of Terms

The following explanation of terms is provided for the assistance of members. Other words which are defined in the By-Laws and Rules shall, unless the context otherwise requires, have the meaning as defined therein.

(1) Public Offering

The term public offering shall mean any primary or secondary distribution of securities made pursuant to a registration statement or offering circular including exchange offers, rights offerings, offerings made pursuant to a merger or acquisition, straight debt offerings, *offerings pursuant to SEC Rule 504*, and all other securities distributions of any kind whatsoever, except any offering made pursuant to an exemption *from registration* under Sections 4(1), 4(2) or 4(6) of the Securities Act of 1933, as amended, or pursuant to Rule 504 *if the securities are "restricted securities" under SEC Rule 144(a)(3)* [(unless considered a public offering in the states where offered)], Rule 505, or Rule 506 adopted under the Securities Act of 1933, as amended. The term public offering shall exclude exempted securities as defined in Section 3(a)(12) of the Act, and debt securities (other than debt securities convertible to common or preferred stock) and financing instrument-backed securities that are rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories. The term public offering shall exclude secondary offerings by an issuer, or any security holder of the issuer, of actively-traded securities

* * * * *

⁴ 17 CFR 230.504.

2710. Corporate Financing Rule— Underwriting Terms and Arrangements

- (a) No change.
- (b) Filing Requirements
- (1)–(7) No change.
- (8) Exempt Offerings

Notwithstanding the provisions of subparagraph (1) above, the following offerings are exempt from this Rule, Rule 2720, and Rule 2810. Documents and information relating to the following offerings need not be filed for review:

(A) securities exempt from registration with the Commission pursuant to the provisions of Sections 4(1), 4(2) or 4(6) of the Securities Act of 1933, as amended, or pursuant to Rule 504 [(unless considered a public offering in the states where offered)] *if the securities are “restricted securities” under SEC Rule 144(a)(3)*, Rule 505, or Rule 506 adopted under the Securities Act of 1933, as amended;

* * * * *

(9) Offerings Required to be Filed
Documents and information relating to all other public offerings including, but not limited to, the following must be filed with the Association for review:

- (A)–(C) No change.

(D) securities exempt from registration with the Commission pursuant to Section 3(a)(11) of the Securities Act of 1933, as amended[, which is considered a public offering in the state where offered];

(E) securities exempt from registration with the Commission pursuant to Rule 504 adopted under the Securities Act of 1933, as amended, [which is considered a public offering in the states where offered] *unless the securities are “restricted securities” under SEC rule 144(a)(3)*;

* * * * *

2720. Distribution of Securities of Members and Affiliates—Conflicts of Interest

- (a) General No change.
- (b) Definitions

For purposes of this Rule, the following words shall have the stated meanings:

- (1)–(13) No change.

(14) Public offering—any primary or secondary distribution of securities made pursuant to a registration statement or offering circular including exchange offers, rights offerings, offerings made pursuant to a merger or acquisition, straight debt offerings, *offerings pursuant to SEC rule 504*, and all other securities distributions of any kind whatsoever, except any offerings made pursuant to an exemption *from registration* under Sections 4(1), 4(2) or

4(6) of the Securities Act of 1933, as amended, or pursuant to SEC Rule 504 [(unless considered a public offering in the states where offered)] *if the securities are “restricted securities” under SEC Rule 144(a)(3)*, SEC Rule 505, or SEC Rule 506 adopted under the Securities Act of 1933, as amended. *The term public offering shall exclude exempted securities as defined in Section 3(a)(12) of the Act.*

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

In its filing with the Commission, NASD Regulation 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. NASD Regulation 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

Background: The term “public offering” is expressly defined in two NASD Rules: the Free-Riding and Withholding Interpretation, Rule IM–2110–1, and the Conflicts-of-Interest Rule, Rule 2720.⁵ The definition of “public offering” found in Rule 2720 not only determines which offerings are subject to that rule, but also in part determines which offerings must be filed with the NASD for pre-offering review under the Corporate Financing Rule, Rule 2710, and the Direct Participation Programs Rule, Rule 2810.⁶ In addition, the NASD generally

⁵ The Free-Riding and Withholding Interpretation, Rule IM–2110–1, requires NASD members and associated persons to make a bona fide public distribution, at the public offering price, of any securities of a public offering which trade at a premium in the secondary market when the secondary market begins.

The Conflicts-of-Interest Rule, Rule 2720, governs the ability of NASD members and associated persons to participate in distributing a public offering of the securities of an NASD member, or to participate in distributing a public offering of the securities of a company with which the member and/or its associated persons, parent or affiliates has a conflict of interest.

⁶ The Corporate Financing Rule, Rule 2710, prevents NASD members and associated persons from participating in the public offering of certain securities subject to Rules 2710, 2720 and 2810 unless documents relating to the public offering are filed with the NASD for review, and the NASD provides an opinion that it has no objection to the

relies upon the definition in Rule 2720 to interpret the scope of other provisions of its rules that reference the term “public offering” or “public offering price.”⁷

Currently, the definitions of “public offering” in IM–2110–1 and Rule 2720 include only offerings made in reliance on Securities Act Rule 504 if the offering is “considered a public offering in the states where offered.” Moreover, paragraphs (b)(8) and (9) of Rule 2710 require the filing of Rule 504 offerings only under such circumstances. Also, because the scope of Rule 2810 is based on the scope of Rule 2710, Rule 2810 applies to Rule 504 offerings only under such circumstances.

Proposed Rule Change: NASD Regulation proposes to amend the definition of “public offering” in IM–2110–1 and Rule 2720 to clarify that the definition encompasses all offerings of securities exempt from SEC registration under Securities Act Rule 504, except for Rule 504 offerings of securities that would be deemed “restricted securities” under Securities Act Rule 144(a)(3).⁸ NASD Regulation further proposes that

proposed underwriting and other terms and arrangements. Rule 2710 also prevents NASD members and associated persons from participating in the public offering of subject securities if the underwriting or other terms or arrangements are unfair or unreasonable.

The Direct Participation Programs Rule, Rule 2810, governs the ability of NASD members and associated persons to participate in the public offering of a direct participation program (a program which provides for flow-through tax consequences, such as a partnership).

Rule 2710 explicitly incorporates the definitions contained in Rule 2720. See Rule 2710(a). Although Rule 2810 does not explicitly adopt those definitions, its scope is based on the scope of Rule 2710.

The definition of the term “public offering” included in the Free-Riding and Withholding Interpretation, Rule IM–2110–1, is limited to the application of that Interpretation. See Endnote 1 in NASD Notice to Members 98–48 (July 1998).

⁷ See NASD Rules 0120(h) (general definition of “fixed price offering”), 0120(p) (general definition of “selling group”), 0120(q) (general definition of “selling syndicate”), 2750 (transactions with related persons), 2830 (investment company securities), 3350 (short sale rule), 3370 (prompt receipt and delivery of securities) and 6410(e) (definition of “initial public offering” in NASD systems and programs rules). As a matter of policy, the NASD interprets those provisions in the context of Rule 2720’s definition of “public offering.” Those provisions do not specifically reference Rule 2720, however.

⁸ Securities Act Rule 144(a)(3), 17 CFR 230.144(a)(3), defines the term “restricted securities” to include, *inter alia*, securities that are subject to resale restrictions under 17 CFR 230.502(d) of Regulation D.

The filing requirements of Rule 2720 are broader than and take precedence over those of Rule 2710. See NASD Rule 2710(b)(7) (describing offerings exempt from filing requirements “unless subject to the provisions of Rule 2720”); 2720(n) (discussing “predominance” of Rule 2720 provisions over any other provisions or interpretations of NASD by-laws or rules).

Rules 2710(b)(8) and (9), which specify which offerings are exempt from Rule 2710 and which offerings are required to be filed under that rule, be amended to clarify that the Rule 2710 filing requirement applies to all Rule 504 offerings, except for offerings of securities that would be deemed Rule 144(a)(3) "restricted securities." Accordingly, all Rule 504 offerings, other than offerings of securities that would be deemed Rule 144(a)(3) "restricted securities," are to be subject to the requirements in Rules 2710, 2720, and 2810, as applicable. In addition, other provisions of NASD rules that refer to "public offerings" would be interpreted to include Rule 504 offerings, except for Rule 504 offerings of securities that would be deemed to be Section 144(a)(3) "restricted securities."

The Commission recently amended Rule 504.⁹ As amended, all Rule 504 offerings are now subject to Rule 502(c) limitations on the manner of offering¹⁰ and to Rule 502(d) limitations on resale,¹¹ unless the Rule 504 offering satisfies certain state law registration requirements or state law exemptions.¹² Because Securities Act Rule 144(a)(3) defines "restricted securities" to include securities subject to Rule 502(d) resale limitations, the scope of the term "restricted securities" therefore would encompass all Rule 504 offerings that do not satisfy the state law registration requirements or exemptions.

The purpose of the proposed rule change is to apply IM-2110-1 and Rules 2710, 2720 and 2810 to those Rule 504 offerings that lack limitations on the manner of offering or limitations on resale, in a way that is consistent with the treatment of other types of "exempt" offerings, such as Regulation A offerings (which lack limitations on the manner of offering or limitations on resale, and are subject to IM-2110-1 and Rules 2710, 2720 and 2810). NASD Regulation believes that it is appropriate to treat as "public offerings" all Rule 504 offerings that are not subject to limitations on the manner of offering or limitations on resale because those offerings share the characteristics of other public offerings.

NASD Regulation also proposes other amendments to the definitions of "public offering" in Rules IM-2110-1 and 2720 to make them consistent and

easier to read. Moreover, the proposed rule change would amend the definition of "public offering" in Rule 2720 to exempt securities that fall within Section 3(a)(12) of the Act's¹³ definition of "exempted securities." Offerings of those securities already are exempt from Rule 2720, as well as Rules 2710 and 2810, pursuant to the language of Rule 2710(b)(8)(B).

Finally, the proposed rule change would amend the provision in Rule 2710(b)(9) to delete the language stating that an offering relying on Section 3(a)(11) of the Securities Act of 1933¹⁴ (the "intra-state exemption") must be filed only when it is "considered a public offering in the state where offered." The Association is proposing to eliminate this language so that Rule 2710(b)(9) is consistent with the definitions of "public offering" in IM-2110-1 and Rule 2720, which encompass all intra-state offerings exempt from SEC registration.¹⁵ Consequently, all Section 3(a)(11) securities offerings would be filed with the Corporate Financing Department for review.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act¹⁶ in that clarification of whether offerings relying on Securities Act Rule 504 are subject to Rule IM-2110-1, Rule 2710, Rule 2720, and Rule 2810 (and are interpreted to be within the concept of "public offering" in other rules of the Association) will promote just and equitable principles of trade and will protect investors and the public. NASD Regulation further believes that the proposed rule change is consistent with the provisions of Section 15A(b)(2) of the Act¹⁷ in that the proposed rule change will promote compliance by members with the rules of the NASD that are applicable to, or reference, public offerings of securities. Moreover, amendments that make the filing requirement consistent for offerings exempt from filing under Section 3(a)(11) of the Securities Act and make the definitions in Rule 2720 more consistent with IM-2110-1 will promote just and equitable principles of trade, protect investors and the public, and enforce compliance by members with the rules of the NASD as required

by Sections 15A(b)(2) and 15A(b)(6) of the Act.

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

NASD Regulation 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.

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. 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 self-regulatory organization 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, NW., Washington, DC 20549-0609. 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-99-02 and should be submitted by July 9, 1999.

⁹ See Securities Act Release No. 7644 (February 25, 1999), 64 FR 11090 (March 8, 1999).

¹⁰ 17 CFR 230.502(c). Rule 502(c) prevents Regulation D offerings from being offered by any form of general solicitation or general advertising.

¹¹ 17 CFR 230.502(d). Rule 502(d) prevents securities acquired in Regulation D offerings from being resold without being registered under the Securities Act or being exempted from registration.

¹² See 17 CFR 230.504(b)(1).

¹³ 15 U.S.C. 78c(a)(12).

¹⁴ 15 U.S.C. 77c(a)(11).

¹⁵ The definitions of "public offering" in IM-2110-1 and Rule 2720 include "all securities distributions of any kind whatsoever" and do not exclude any type of intra-state offering.

¹⁶ 15 U.S.C. 78o-3(b)(6).

¹⁷ 15 U.S.C. 78o-3(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-15484 Filed 6-17-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41499; File No. SR-NASD-99-25]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Level 1 Market Data Fees

June 9, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 17, 1999,³ the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly owned subsidiary, Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. On May 28, 1999 Nasdaq submitted Amendment No. 1 to the proposed rule change.⁴ 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, as amended.

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On May 3, 1999, Nasdaq filed a similar proposed rule change, SR-NASD-99-24. On May 14, 1999, Nasdaq withdrew this filing because of procedural issues. See letter to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, dated May 3, 1999.

⁴ In Amendment No. 1, Nasdaq amended the proposed rule change to remove a provision conditioning participation in the pilot program on a participant guaranteeing to pay, at a minimum, 75% of that participant's fee assessment associated with its December 1998 per level query usage and non-professional population. See letter to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, from Thomas P. Moran, Assistant General Counsel, Office of General Counsel, Nasdaq, dated May 27, 1999.

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

Nasdaq filed a proposed rule change to amend Rule 7010 of the National Association of Securities Dealers, Inc. Under the proposal, Nasdaq will establish a 1 year pilot program, commencing with the April 1, 1999 billing period, to reduce by 50% the fees for Nasdaq Level 1 market data delivered to non-professional users on either a per query or monthly basis.⁵

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 III 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

Nasdaq has consistently supported the broadest, most effective dissemination of market information to public investors. To that end, Nasdaq is proposing a 1 year pilot program to reduce by 50% the fees for Level 1 market data delivered to non-professional users on either a per query or monthly basis. Under the proposed pilot, the per query fee would be reduced from \$.01 to \$0.005 per query and the non-professional per user fee would be reduced from \$4 to \$2 per month.

Reducing these market data fees unequivocally demonstrates Nasdaq's commitment to individual investors and responds to the dramatic increase in the demand for real-time market data by non-professional market participants. In addition, reduced Nasdaq rates will lessen the costs to NASD member firms of supplying real-time market data to their customers through automated means and is also likely to encourage current delayed-data vendors to offer increased access to real-time Level 1 data to their subscribers.

⁵ The pilot expires April 1, 2000. If, after assessing the pilot's viability, the NASD decides to make those fees a permanent part of its fee structure, the Commission expects that the NASD will file the proposal for approval. See *NASD Manual*, charges for services and equipment, Rule 7100(b).

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5)⁶ of the Act in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls.

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.

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, 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. 20549-0609. 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 Nasdaq. All submissions should refer to File No. SR-NASD-99-25 and should be submitted by July 9, 1999.

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

The Commission finds that the proposed rule change is consistent with the requirements of the Act⁷ and the rules and regulations thereunder

⁶ 15 U.S.C. 78o-3(b)(5).

⁷ In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).