

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, 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the MSRB. All submissions should refer to File No. SR-MSRB-00-7 and should be submitted by June 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42852; File No. SR-NASD-00-17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Minimum Quotation Sizes in the OTC Bulletin Board

May 30, 2000.

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 April 10, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary the Nasdaq Stock Market, Inc. ("Nasdaq")

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 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 an amendment to NASD Rule 6750 that would modify the minimum quotation sizes for securities quoted at a price exceeding \$200 in the OTC Bulletin Board ("OTCBB"). Below is the text of the proposed rule change. Proposed new language is in *italic*; proposed deletions are in brackets.

6750. Minimum Quotation Size Requirements For OTC Equity Securities

(a) Every member firm that functions as a market maker in OTC Equity Securities by entering firm quotations into the OTC Bulletin Board Service (OTCBB) (or any other inter-dealer quotation system that permits quotation updates on a real-time basis) must honor those quotations for the minimum size defined in the table below. In this regard, it is the market maker's responsibility to determine the minimum size requirement applicable to its firm bid and/or offer in each of its registered securities (excluding OTC Equity Securities for which the OTCBB will not accept firm quotations). Depending on the price level of the bid or offer, a different minimum size can apply to each size of the market being quoted by the member firm in a given security.

Price (bid or offer)	Minimum quote size
0-.50 *	5,000
.51-1.00	2,500
1.01-10.00	500
10.01-100.00	200
100.01-200.00	100
[200.01+	50]
200.01-500	25
500.01-1000	10
1000.01-2500	5
2500.01+	1

*The OTCBB can accept bids/offers expressed in fractions as small as 1/256 or in decimals up to six places. In applying the price test for minimum quotation size, any increment beyond an upper limit in the right hand column will trigger application of the minimum quote size for the next tier. For example, a bid (or offer) of \$.505 must be firm for a size of 2,500 shares.

[A Nasdaq officer at the Executive Vice President level or above, within its discretion, may modify the minimum

quotation size for those securities with a price exceeding \$200.]

(b) 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

1. Purpose

Nasdaq is proposing to modify the minimum quotation size for securities quoted on the OTCBB that exceed a price of \$200 per share. Nasdaq believes that this modification is necessary to correct a previously unforeseen problem with the schedule contained in Rule 6750, which presently mandates that securities priced over \$200 per share be traded in blocks of 50 shares or more.³ For certain highly priced and/or thinly traded securities, this rule has had an undesired and detrimental effect on transparency and liquidity.

Rule 6750 was originally approved by the Commission in 1993⁴ during the early stages of the OTCBB service. Prior to implementation of the rule, all priced quotations on the OTCBB were required to be firm for blocks of 100 shares or more. This approach soon proved unworkable for lower priced securities for which a quote of 100 shares could represent an insignificant aggregate dollar value commitment to the market.

To remedy this situation, the NASD implemented this minimum quotation size rule for securities priced at \$200 per share and below on a "graduated" or "tired" basis.⁵ For securities quoted

³ The Commission notes that, in SR-NASD-99-32, the NASD added a provision to Rule 6750 allowing some Nasdaq officers to modify the minimum quotation size for securities with a price greater than \$200 per share. See Exchange Act Release No. 41907 (Sept. 23, 1999), 64 FR 52817 (Sept. 30, 1999).

⁴ See Exchange Act Release No. 32570 (July 1, 1993), 58 FR 36725 (July 8, 1993).

⁵ This requirement applies only to market makers entering priced quotations. Market makers are

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

at 50 cents per share or less, the market maker quoting such security would be required to honor that quotation for a minimum of 5,000 shares. This approach was extended up to \$200 per share, with different minimum block sizes at 2,500, 500, 200, and 100 shares. For all quotations exceeding \$200 per share, the minimum quote size was determined to be 50 shares.

Since implementation of this rule, there have been unanticipated changes to the OTCBB. Among those changes has been the quotation of certain securities for thousands of dollars per share, and, in a few isolated instances, securities quoted in excess of \$100,000 per share. The presence of these highly priced securities was not considered when Rule 6750 was originally proposed with the smallest minimum quotation size of 50 shares. A situation has resulted in which market makers have been unwilling to enter priced quotations for such highly priced and thinly traded securities for fear of potentially significant liability to their proprietary accounts.

To alleviate the potential exposure of quoting 50 shares of these highly priced securities, market makers have ceased entering quotations and instead post only indications of interest for these securities into the OTCBB. While posting an indication of interest is permitted in the OTCBB, the purpose of the OTCBB or any inter-dealer quotation medium is to permit multiple market participants to obtain quickly and efficiently the best bid or offer in a security and to execute the transaction without unnecessary delay. Additionally, priced quotations create a more competitive market and foster enhanced price discovery, ultimately benefiting the investing public.

Recognizing these goals and the present problems caused by the lack of flexibility in Rule 6750, the NASD recently proposed and was granted discretionary authority from the Commission to modify the tier sizes for securities quoted in excess of \$200.⁶ This authority was conferred to alleviate a pressing situation while providing Nasdaq with the necessary time to formulate and approve a permanent proposal for minimum quotation sizes. Accordingly, Nasdaq now submits this proposal to modify permanently the tier sizes for OTCBB securities quoted at prices in excess of \$200 per share. The proposed new tier sizes were formulated to comport with the objectives of the

original rule, effectively requiring that each quotation represent trading interest of approximately \$5,000 to \$20,000. At the same time, Nasdaq proposes to delete from Rule 6750 the provision granting certain officers of the Nasdaq discretionary authority to modify tier sizes, as this authority will no longer be necessary.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of sections 15A(b)(6) and 15A(b)(11) of the Act.⁷ Section 15A(b)(6) requires, in part, that the rules of a registered national securities association be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals to 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 15A(b)(11) requires, among other things, that the rules of a registered national securities association be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

Nasdaq believes that the proposed rule specifically promotes the objectives of sections 15A(b)(6) and 15A(b)(11), respectively, by facilitating transactions free of impediments to a free and open market while producing fair and informative quotations. The rule will encourage market makers to display firm quotations in OTCBB securities, thereby providing increased transparency, competition, and price discovery.

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. 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 Nasdaq 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 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-00-17 and should be submitted by June 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority:⁸

Margaret H. McFarland,
Deputy Secretary.

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permitted to enter unpriced indications of interest into the OTCBB, see NASD Rule 6520, which are not held to the minimum quotation size standard.

⁶ See *supra* note 3.

⁷ 15 U.S.C. 78o-3(b)(6) and (11).

⁸ 17 CFR 200.30-3(a)(12).