

shall file statements of any such issues they believe to exist by October 11, 2001, and be prepared to discuss those statements in the prehearing conference to be held the following day.

#### *Need for Hearing*

A decision on whether there is a need for evidentiary hearings, and the scope of any such hearings, cannot be made at this time. Comments on this matter, and other procedural issues raised by the Service's request, should be filed no later than October 11, 2001, and participants should be prepared to discuss these matters at the prehearing conference.

#### *Representation of the General Public*

In conformance with § 3624(a) of title 39, the Commission designates Shelley S. Dreifuss, acting director of the Commission's office of the consumer advocate (OCA), to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding. The OCA shall be separately served with three copies of all filings, in addition to and at the same time as, service on the Commission of the 24 copies required by Commission rule 10(d) [39 CFR 3001.10(d)].

#### *Prehearing Conference*

A prehearing conference will be held Friday, October 12, 2001, at 10 a.m. in the Commission's hearing room. At the conference, the Postal Service will be expected to report on the progress made in the off-the-record settlement conference it has announced for the preceding day. The Service and other participants should also be prepared to address the procedural matters discussed above.

#### *Ordering Paragraphs*

It is ordered:

1. The Commission establishes docket nos. R2001-2 and MC2001-2, preliminarily designated as experimental suspension of fee for manual delivery confirmation category, to consider the request referred to in the body of this order.

2. The Commission will sit en banc in this proceeding.

3. The deadline for filing notices of intervention is Wednesday, October 10, 2001.

4. Answers to the Service's motion for waiver of certain filing requirements and comments on the appropriateness of considering the request under sections 67 through 67d of the rules of practice are due no later than October 10, 2001.

5. Written discovery pursuant to rules 26-28 may be undertaken upon intervention.

6. Objections to written discovery requests shall be filed within 3 workdays, as specified in the body of this order.

7. The Service shall respond to discovery requests within 7 days, as specified in the body of this order.

8. Interested parties shall file statements of issues they perceive in the case, in accordance with 39 CFR 3001.67a(b), and comments on the need for evidentiary hearings, and the scope of any such hearings, by October 11, 2001.

9. A prehearing conference will be held Friday, October 12, 2001, at 10 a.m. in the Commission's hearing room.

10. Shelley S. Dreifuss, acting director of the Commission's office of the consumer advocate, is designated to represent the interests of the general public in this proceeding.

11. The acting secretary shall arrange for publication of this notice and order in the **Federal Register**.

Dated: September 27, 2001.

**Steven W. Williams,**

*Acting Secretary.*

[FR Doc. 01-24639 Filed 10-2-01; 8:45 am]

BILLING CODE 7710-FW-P

## POSTAL RATE COMMISSION

### Postal Facility Tour

**AGENCY:** Postal Rate Commission.

**ACTION:** Notice of commission visit.

**SUMMARY:** On September 26, 2001, the Commission issued a notice in Docket No. R2001-1 concerning a postal facility tour. It informs participants that members of the Commission accompanied by advisory staff will tour the Postal Service's Baltimore General Mail Facility on October 10, 2001, beginning at 7 p.m. Arrangements for this visit were initiated prior to the filing of the Postal Service request in this docket.

**DATES:** The tour is scheduled for October 10, 2001; this notice was issued September 26, 2001.

#### **FOR FURTHER INFORMATION CONTACT:**

Stephen L. Sharfman, General Counsel, Postal Rate Commission, 202-789-6820.

Dated: September 27, 2001.

**Steven W. Williams,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44857; File No. SR-NASD-2001-61]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Provide Nasdaq Issuers Temporary Relief From Listing Requirements Relating to the Bid Price for Continued Inclusion and the Market Value of the Public Float**

September 27, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 26, 2001, the National Association of Securities Dealers, Inc. ("NASD"), through its 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. Nasdaq asserts that the proposed rule change meets the criteria set forth in Rule 19b-4(f)(6),<sup>3</sup> which renders this proposal effective upon receipt of this filing by the Commission. 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**

Nasdaq has filed with the Commission a proposed rule change to temporarily suspend, through January 2, 2002, the application of the continued inclusion bid price and market value of public float requirements set forth in NASD Rules 4310(c)(4), 4310(c)(7), 4450(a)(2), 4450(a)(5), 4450(b)(3), and 4450(b)(4).

### **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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

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**

The purpose of the proposed rule change is to provide issuers temporary relief from the continued inclusion bid price and market value of public float requirements. Nasdaq's continued inclusion bid price requirements are set forth in NASD Rules 4310(c)(4), 4450(a)(5), and 4450(b)(4), and its continued inclusion market value of public float requirements are set forth in NASD Rules 4310(c)(7), 4450(a)(2), and 4450(b)(3). NASD Rule 4310(c)(8)(B) provides that, if a company fails to meet the applicable bid price or market value of public float requirement for 30 consecutive business days, it will be notified and provided a 90-day grace period to regain compliance. Compliance is achieved by meeting the applicable standards for ten consecutive business days during the 90-day compliance period. If the company fails to comply with the applicable standards, delisting procedures are initiated under the NASD Rule 4800 series.

Nasdaq has stated that, given the extraordinary market conditions surrounding the September 11 tragedy, there has been a recent escalation in the number of companies falling short of the bid price and market value of public float requirements. Due to the dramatic increase in the number of companies potentially impacted, Nasdaq has determined that the bid price and market value of public float requirements should be suspended through January 2, 2002. Under this proposal, companies would not be cited for bid price or market value of public float deficiencies, and companies in the 90-day grace period or in the review process for bid price or market value of public float deficiencies would be taken out of the deficiency process with respect to those requirements. Nasdaq has stated that no deficiencies will accrue during the suspension period. During this time, Nasdaq staff will consider whether it is appropriate to recommend further, and more permanent, action.

**2. Statutory Basis**

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act<sup>4</sup> in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. Nasdaq reiterates that the proposed rule change is designed to minimize impact on issuers in the marketplace, while providing greater transparency and consistency.

*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**

Nasdaq asserts that the proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>5</sup> and paragraph (f)(6) of Rule 19b-4 thereunder,<sup>6</sup> because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Nasdaq has requested that the Commission waive the 30 day preoperative period in order to provide companies immediate relief, given the current extraordinary market conditions. In addition, Rule 19b-4(f)(6) requires the self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Nasdaq also requests that the Commission, for the same reasons, waive the five-day notice requirement.

The Commission finds that it is consistent with the protection of investors and the public interest to

waive the 30-day pre-operative period.<sup>7</sup> The Commission believes that the potential benefits of the proposed rule change could be lost if the Commission does not accelerate the operative date of the rule, as Nasdaq might otherwise be required under NASD rules to commence delisting proceedings against certain issuers. Moreover, the Commission finds that waiving the 30-day pre-operative requirement will have no adverse impact on the public interest. The Commission believes that, notwithstanding the accelerated operative date, the public will have ample opportunity to learn about and analyze the consequences of the proposed rule change. The Commission also notes that the suspension of the Nasdaq listing requirements relating to the bid price for continued inclusion and the market value of the public float is temporary; any subsequent action taken by Nasdaq to suspend or alter its listing standards will also be subject to the rule filing process under Section 19(b) of the Act.<sup>8</sup> For these same reasons, the Commission also waives the five-day notice requirement.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary of 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 in the Commission's Public Reference Room. Copies of such filing will also be

<sup>7</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78s(b).

<sup>4</sup> 15 U.S.C. 78o-3(b)(6).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19(b)-4(f)(6).

available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2001-61 and should be submitted by October 24, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44848; File No. SR-OCC-2001-02]

### Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Proposed Rule Change Relating to Deposits of Nasdaq SmallCap Securities as Margin Collateral Pursuant to Rule 604(d)

September 25, 2001.

On April 11, 2001, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-OCC-2001-02) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on August 3, 2001.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### I. Description

The primary purpose of the filing is to allow securities traded in the Nasdaq

SmallCap market to be deposited as collateral pursuant to OCC Rule 604(d). The rule change also makes certain other technical changes to the rule.

In 1984, OCC received Commission approval to amend Rule 604(d) to allow the deposit of securities traded in the Nasdaq National Market System ("NMS") as a form of margin collateral.<sup>3</sup> Nasdaq formed the NMS market in 1982 to distinguish NMS securities as those securities that met the highest listing standards and that were subject to real-time sale price and volume reporting. Securities that did not meet NMS standards were termed "regular Nasdaq securities." While the eligibility criteria found in Rule 604(d) have remained relatively unchanged since 1984, the structure of the Nasdaq market has evolved substantially since then.

The Nasdaq market structure has had many notable changes. For example, in 1992, all Nasdaq securities became subject to real-time last sale price and volume reporting requirements, increasing the transparency for all Nasdaq issues (i.e., NMS and regular Nasdaq securities).<sup>4</sup> Then, in 1994, the Nasdaq Stock Market was created with two distinct tiers: the Nasdaq National Market® ("NNM," formerly the NMS market) and the SmallCap market (formerly the regular Nasdaq securities).<sup>5</sup> Later, in 1997, the qualification standards of both the NNM and the SmallCap market tiers were substantially upgraded.<sup>6</sup>

The upgraded qualification standards applicable to Nasdaq SmallCap issuers set forth minimum and ongoing financial criteria (e.g., assets, capitalization, and income), share float and price criteria, corporate governance (e.g., independent directors, audit

committee formation and activities, auditor peer review, and voting rights), and public disclosure (e.g., timely filing and distribution of annual and interim financial reports and annual meeting of shareholders).<sup>7</sup> These qualification criteria exceed the standards that governed the Nasdaq NMS securities at the time those securities were approved for margin purposes in 1984. The Nasdaq SmallCap qualification standards approximate American Stock Exchange ("Amex") listing criteria applicable to equity securities.<sup>8</sup> Such Amex listed equity securities are accepted by OCC for margin purposes. OCC therefore believes that the qualification standards that are applicable to SmallCap issues provide sufficient safeguards to address concerns about the quality of securities traded in that market tier.

The ten dollar minimum price per share requirement and concentration limit (i.e., the securities of any one issuer cannot exceed 10% of the margin requirement for any one clearing member account) of Rule 604(d) also provide additional safeguards to minimize issuer quality concerns. OCC has analyzed the market and liquidity risks associated with accepting SmallCap securities for margin purposes by utilizing daily price movements and volume statistics for the last four years. Average daily price movements and standard deviation of average daily price movements for the entire population of SmallCap securities as well as subset of that population having a price of greater than ten dollars per share were computed. For comparison, a similar computation was performed for NNM securities. A summary of this analysis is outlined below:

| Class                  | Average range minimum (in percent) | Average range maximum (in percent) | Average move <sup>1</sup> (in percent) | Average standard deviation (in percent) |
|------------------------|------------------------------------|------------------------------------|----------------------------------------|-----------------------------------------|
| NNM (All) .....        | - 24.5                             | +86.2                              | 3.6                                    | 7.5                                     |
| NNM (>\$10) .....      | - 21.3                             | +29.9                              | 3.2                                    | 4.8                                     |
| SmallCap (All) .....   | - 33.9                             | +128.2                             | 5.0                                    | 10.7                                    |
| SmallCap (>\$10) ..... | - 21.1                             | +51.4                              | 2.6                                    | 5.3                                     |

<sup>1</sup> Computed on the basis of the absolute value daily price movements.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> Securities Exchange Act Release No. 44608 (July 27, 2001), 66 FR 40764.

<sup>3</sup> Securities Exchange Act Release No. 20558 (January 18, 1984), 49 FR 2183 [File No. SR-OCC-83-17] (order approving an OCC rule change allowing clearing members to deposit certain common stocks not underlying options to satisfy their margin obligations).

<sup>4</sup> Securities Exchange Act Release No. 30569 (April 16, 1992), 57 FR 13396 [File No. SR-NASD-91-50] (order approving a rule change requiring real-time trade reporting of transactions in Nasdaq securities, except convertible debt, and allowing the NASD to publicly disseminate the information).

<sup>5</sup> Securities Exchange Act Release No. 34928 (November 9, 1994), 59 FR 55906 [File No. SR-NASD-94-48] (order clarifying the two tiers of the Nasdaq Stock Market as the Nasdaq SmallCap Market and the Nasdaq National Market).

<sup>6</sup> Securities Exchange Act Release No. 38961 (August 29, 1997), 62 FR 45895 [File No. SR-NASD-97-16] (order revising the listing and maintenance standards to increase the quality of companies listed on Nasdaq and raising the level of investor protection).

<sup>7</sup> NASD Rules 4310 and 4350.

<sup>8</sup> American Stock Exchange Company Guide, Sections 101, 102, and 120-132.