

Room. Copies of the filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-2001-30 and should be submitted by February 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45300; File No. SR-NASD-2002-02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc.; To Amend NASD Code of Procedure Rule 9522

January 17, 2002.

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 4, 2002, 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 ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by NASD Regulation. On January 11, 2002, NASD Regulation amended the proposal.³ NASD Regulation filed the proposal pursuant to section 19(b)(3)(A) of the act,⁴ and Rule 19b-4(f)(6) thereunder,⁵ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule

change, as amended, from interested persons.

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

NASD Regulation proposes to amend NASD Code of Procedure Rule 9522, Initiation of Eligibility Proceeding; Member Regulation Consideration, to describe in the Rule the cases in which the Department of Member Regulation may approve an MC-400 application for relief from NASD eligibility requirements. The text of the proposed rule change is below. Proposed new language is in italics. Proposed deletions are in brackets.

9522. Initiation of Eligibility Proceeding; Member Regulation Consideration

(a) through (e)(2)(A) No change.

(B) The Department of Member Regulation finds, after reasonable inquiry, that except for the identity of the employer concerned, the terms and conditions of the proposed admission or continuance are the same in all material respects as those imposed or not disapproved in connection with a prior admission or continuance of the disqualified person pursuant to an order of the Commission under SEC Rule 19h-1 or other substantially equivalent written communication, and that there is no intervening conduct or other circumstance that would cause the employment to be inconsistent with the public interest or the protection of investors; [or]

(C) The disqualification previously was a basis for the institution of an administrative proceeding pursuant to a provision of the federal securities laws, and was considered by the Commission in determining a sanction against such disqualified person in the proceeding; and the Commission concluded in such proceeding that it would not restrict or limit the future securities activities of such disqualified person in the capacity now proposed, or, if it imposed any such restrictions or limitations for a specified time period, such time period has elapsed[.];or

(D) The disqualification consists of a court order or judgment of injunction or conviction, and such order or judgment:

(i) expressly includes a provision that, on the basis of such order or judgment, the Commission will not institute a proceeding against such person pursuant to section 15(b) or 15B of the Act or that the future securities activities of such persons in the capacity now proposed will not be restricted or limited; or

(ii) includes such restrictions or limitations for a specified time period and such time period has elapsed.

* * * * *

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 its proposal and discussed any comments it received regarding the proposal. 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

NASD Regulation proposes to amend Rule 9522 to expressly describe in the Rule those instances in which the Department of Member Regulation may approve an MC-400 application for relief from NASD eligibility requirements. In August 2000, the SEC approved amendments to Rule 9522 to, among other things, provide the Department of Member Regulation with the discretion to approve an MC-400 application in those cases in which the disqualifying event is excepted from the "full" notice requirements of Rule 19h-1 under the Act,⁶ but where a "short form" notification to the SEC under Rule 19h-1 is still required.⁷ The proposed rule change provides a complete description, within Rule 9522, of those cases in which the disqualifying event permits "short form" notification to the SEC under Rule 19h-1.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,⁸ which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general to protect investors and the public interest.

⁶ 17 CFR 240.19h-1.

⁷ See Securities Exchange Act Release No. 43102 (August 1, 2000), 65 FR 48266 (August 7, 2000) (SR-NASD-99-76) at 48269.

⁸ 15 U.S.C. 78o-3(b)(6).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See January 11, 2002 letter from Sarah J. Williams, Assistant General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC ("Amendment No. 1"). In Amendment No. 1, NASD Regulation provided its rationale for waiver of the 30-day operative delay. See Rule 19b-4(f)(6). 17 CFR 240.19b-4(f)(6). The 60-day abrogation period runs from January 11, 2002, the date that NASD Regulation filed Amendment No. 1.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6). NASD Regulation asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay.

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, 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.

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

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
 - (ii) Impose any significant burden on competition; and
 - (iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6)¹⁰ thereunder.
- At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such 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.

NASD Regulation has asked that the Commission waive the 5-day pre-filing notice requirement and accelerate the operative date. The Commission finds good cause to do so, because such designation is consistent with the protection of investors and the public interest. Rule 9522, in its current form, does not provide a full description of the cases in which the Department of Member Regulation may approve an MC-400 application for relief from NASD eligibility requirements. Because the proposed rule change would amend Rule 9522 to provide a complete description of those cases in which the disqualifying event requires "short form" notification to the SEC under Rule 19h-1, the Commission finds waiver of the pre-filing notice requirement and operative delay is consistent with the protection of investors and the public interest. For these reasons, the Commission finds good cause to waive the 5-day pre-filing notice requirement and the 30-day operative waiting period to allow the

proposed rule change to be both effective and operative upon filing with the Commission.¹¹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 Association. All submission should refer to file number SR-NASD-2002-02 and should be submitted by February 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45283; File No. SR-NASD-2001-84]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 by the National Association of Securities Dealers, Inc. To Change the Description of the Market Capitalization Listing Standard to Market Value of Listed Securities

January 15, 2002.

I. Introduction

On November 14, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change to modify the description of the market capitalization listing standard to market value of listed securities. Nasdaq is also proposing to provide a definition of the term "listed securities" in Nasdaq's Marketplace Rules.

The proposed rule change was published for comment in the **Federal Register** on December 5, 2001.³ The Commission received no comments on the proposal. On December 18, 2001, the Exchange submitted Amendment No. 1 to the proposed rule change.⁴

II. Description

The Exchange has proposed to amend the description of the market capitalization listing standard to market value of listed securities. One of the standards under which issuers can qualify for listing on The Nasdaq National Market ("National Market") is to have a market capitalization of at least \$75,000,000. Issuers may also qualify for continued inclusion on the National Market with at least \$50,000,000 in market capitalization. The minimum market capitalization standards for initial and continued inclusion on The Nasdaq SmallCap

¹¹ 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. 15 U.S.C. 78c(f). The Commission notes that, should cases arise where approval of an MC-400 application for relief from NASD eligibility requirements does not reasonably fall within the scope of Rule 9522 as amended by this proposed rule change, the NASD must file a proposed rule change to amend the Rule.

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 45116 (November 28, 2001), 66 FR 63275 (December 5, 2001).

⁴ See Letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 17, 2001 ("Amendment No. 1"). In Amendment No. 1, the Exchange requested that the proposed rule change become effective on June 1, 2002.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).