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 also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–77 and should be submitted on or before October 12, 2006.

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

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 06–7843 Filed 9–20–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54457; File Nos. SR–FICC–2006–03 and SR–NSCC–2006–03]

Self-Regulatory Organizations; Fixed Income Clearing Corporation and National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes to Institute a Clearing Fund Premium Based Upon a Member's Clearing Fund Requirement to Excess Regulatory Capital Ratio

September 15, 2006.

On February 22, 2006, the Fixed Income Clearing Corporation (''FICC'') and the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule changes SR–FICC–2006–03 and SR–NSCC–2006–03 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on April 24, 2006.[2] Seven comment letters were received.[3] FICC and NSCC amended the proposed rule changes on July 28, 2006, to address certain concerns raised by the commenters and others.

The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposals.

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

FICC and NSCC are each seeking to institute a clearing fund premium based on a member's clearing fund requirement to excess regulatory capital ratio.

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

In their filings with the Commission, FICC and NSCC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item VI below. FICC and NSCC have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

FICC and NSCC are each seeking to institute a clearing fund premium based on a member's clearing fund requirement to excess regulatory capital ratio.

1. FICC Clearing Fund Premium

The degree to which the collateral requirement of a clearing agency member compares to the member's excess regulatory capital is an important indicator of the potential risk that the member presents to a clearing agency. In 2002, the Government Securities Clearing Corporation (''GSCC''), the predecessor to the Government Securities Division (''GSD'') of FICC, received Commission approval to impose a collateral premium on netting members whose clearing fund requirements exceed their excess regulatory capital.[5] Specifically, the GSD implemented a 25 percent collateral premium when a member's ratio of clearing fund requirement to its excess regulatory capital is greater than 1.0. The 25 percent premium is applied to the amount by which the member's clearing fund requirement exceeds the member's excess regulatory capital.

In order to more effectively manage the risk posed by a GSD member whose activity causes it to have a clearing fund requirement that is greater than its excess regulatory capital, FICC now proposes to strengthen the above-mentioned risk management tool by applying a clearing fund premium that is based on a member's ratio of clearing fund requirement to excess regulatory capital in place of the current flat premium of 25 percent.[6] The premium would be determined by multiplying the amount by which a member's clearing fund requirement exceeds its excess regulatory capital by the member's ratio of required clearing fund to excess regulatory capital expressed as a percent. This formula would allow the premium to increase or decrease in proportion to changes in the ratio and should allow for risk management that is measured in proportion to the risk presented. For example, if a member has a clearing fund requirement of $11.4 million and excess net capital of $10 million, its clearing fund requirement would exceed its excess net capital by $1.4 million, its ratio of clearing fund requirement to excess net capital is 1.14 (or 114 percent), and the applicable collateral premium would be 114 percent of $1.4 million or $1,596,000. If the same member had a clearing fund requirement of $20 million, its clearing fund requirement would exceed its excess net capital by $10 million, its ratio of clearing fund requirement to excess net capital would be 2.0 (or 200 percent), and the applicable collateral premium would be 200 percent of $10 million or $20 million.

[13] 17 CFR 200.30–3(a)(12).

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

[2] Securities Exchange Act Release No. 53671 (April 18, 2006), 71 FR 21060.

[3] Jim Nardone, Schonfeld Securities, LLC (''Schonfeld'') (May 5, 2006); Richard Gill, Senior Vice President, and Donald Galante, Senior Vice President, Man Securities Inc. (''Man'') (May 15, 2006); L. Thomas Patterson, Chief Executive Officer, and Kathleen M. Toner, Chief Regulatory Officer, LaBranche & Co. Inc. (''LaBranche'') (May 18, 2006); Peter Chepucavage, International Association of Small Broker-Dealers and Advisers (''IASBDA'') (May 19, 2006); Greggory A. Teeter, Howrey LLC, representing Wilson-Davis & Co., Inc. (''Wilson-Davis''), Alpine Securities Corporation (''Alpine''), and IASBDA (June 1, 2006); Cheryl T. Lambert, Managing Director, Risk Management, The Depository Trust and Clearing Corporation (''DTCC'') (July 28, 2006); and Peter Chepucavage, IASBDA (August 9, 2006).

Schonfeld, Wilson-Davis, Alpine, and LaBranche are members of NSCC. Man is a member of FICC. IASBDA is an organization created for the purpose of protecting the interests of small and midsize broker-dealers and micro-cap issuers.

[4] The Commission has modified the text of the summaries prepared by FICC and NSCC.

[5] Securities Exchange Act Release No. 45647 (March 26, 2002), 67 FR 15438 (April 1, 2002) [File No. SR–GSCC–2001–15]. ''Excess regulatory capital'' for purposes of GSD's collateral premium included excess net capital, excess liquid capital, or excess adjusted capital.

[6] If FICC imposes this premium on a netting member, then it shall be considered included as part of the netting member's ''required fund deposit'' as defined in the GSD's rules.

Currently, FICC's collateral premium applies to members whose excess regulatory capital is measured as excess net capital, excess liquid capital, or excess adjusted net capital. The proposed rule change would also include excess equity capital as regulatory excess capital so that the premium can be applied to bank and trust company netting members whose capital is measured as equity capital.

The proposed rule change would also make an additional change to Rule 4 (Clearing Fund, Watch List and Loss Allocation), Section 3 (Watch List) to remove a provision that allows FICC to require a netting member to adjust its trading activity so that its excess regulatory capital ratio decreases to a satisfactory level. While this provision was appropriate under the fixed 25 percent premium, it would no longer be appropriate under the new ratio-based clearing fund premium because the new premium formula would impose a variable premium based on activity that would require members to either adjust their trading activity or be subject to the higher premium.

2. NSCC Clearing Fund Premium

NSCC is proposing to impose a clearing fund premium on Rule 2 (Members) broker/dealer and bank members whose clearing fund requirement exceeds their regulatory excess capital. NSCC's proposed excess regulatory capital premium would apply to members whose regulatory excess capital is measured as excess net capital or excess equity capital. The excess regulatory capital premium would be triggered when a member's ratio of clearing fund requirement to excess regulatory capital is greater than 1.0 and would be determined using the same formula as that proposed by FICC. The new premium would be added to NSCC's clearing fund formula in Procedure XV (Clearing Fund Formula and Other Matters). [7]

3. FICC and NSCC Clearing Fund Premiums

As a matter of practice, when a FICC or NSCC member's clearing fund requirement to excess regulatory capital ratio is between .50 and 1.0, a warning notification would be issued to put the member on notice that a collateral premium will be required if the ratio reaches an amount greater than 1.0. When a member's ratio exceeds 1.0, it would be notified on the business day that a collateral premium has been calculated and is to be collected.

FICC and NSCC reserve the right to: (i) Apply a lesser collateral premium (including no premium) based on specific circumstances (such as a member being subject to an unexpected haircut or capital charge that does not fundamentally change its risk profile) and (ii) return all or a portion of the premium amount if it believes that the member's risk profile does not require the maintenance of that amount.

FICC and NSCC believe that the proposed rule changes are consistent with the requirements of Section 17A of the Act [8] and the rules and regulations thereunder applicable to FICC and NSCC because they should help FICC and NSCC assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible by allowing FICC and NSCC to more effectively manage risk presented by certain members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC and NSCC do not believe that the proposed rule changes would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

Written comments relating to the proposed rule changes have been received and addressed by FICC and NSCC.

III. Comments

The Commission received seven comment letters to the proposed rule changes. Schonfeld, Wilson-Davis, Alpine, LaBranche, Man, and IASBDA wrote letters opposing the proposed rule changes.[9] DTCC submitted a letter responding to those letters.[10]

All of the commenters in opposition to the proposed rule changes argued that the imposition of the clearing fund premium would place a disproportionate burden on smaller broker-dealers because they are generally less capitalized than the larger broker-dealers and are not in a position to meet higher capital requirements that could result from the proposed rule changes. FICC and NSCC responded that the premium calculation is based on a ratio that is applied to all members equally and is meant to reflect the risk a member introduces to the clearing agencies.

All of the commenters opposing the proposed rule changes argued that the proposed rule changes would have an anticompetitive effect and/or place an undue burden on competition in that smaller broker-dealers would be unable to meet the higher clearing fund obligations and would be forced out of business which could result in less competition among broker-dealers. One result of the clearing fund premium would be that small issuers and emerging companies would not have such smaller broker-dealers to assist in capital formation.

FICC and NSCC responded that there are over 6000 broker-dealers registered with the Commission. FICC has 61 broker-dealer members in its GSD and NSCC has approximately 221 full service broker-dealer members. Such figures, according to FICC and NSCC indicate that the competition among broker-dealers is healthy. FICC and NSCC also responded that the proposed rule changes would not be barriers to entry to the brokerage business and that the Act does not provide broker-dealers with a right to be a direct member of a registered clearing agency. FICC and NSCC noted that a firm that is potentially affected by the proposed rule changes could (1) Retain or raise additional capital relative to the business it clears through the clearing agency, (2) limit the business it clears through the clearing agency so that the risk to which the clearing agency and its members is exposed based upon such business is proportionate to the firm's excess net capital, or (3) seek another firm through which to clear its business.

LaBranche and Schonfeld suggested that a general fund similar to the SIPC or FDIC models could be created to mitigate risks in the clearing system. FICC and NSCC responded that the clearing fund, like the SIPC or FDIC models, exists as a means to mutualize the risk that any given member presents as a result of its business should the member fail and the clearing agency be required to close the member out and assume the risk of loss on those operations. FICC and NSCC argued that the commenters seeking a general fund like SIPC or the FDIC model are seeking an entity other than themselves to bear the risk of their businesses by shifting the credit risk from the member to FICC or NSCC and the memberships at large.

Howrey and Man argue that the current risk management tools used by FICC and NSCC are adequate. Man states that the FICC minimum net worth requirement of $50,000,000 and the minimum net excess capital requirement of $10,000,000 have provided adequate protection to FICC as

[7] This premium would not apply to The Canadian Depository for Securities Limited (''CDS'') clearing fund requirement that is computed pursuant to Appendix 1 of NSCC's rules.

[8] 15 U.S.C. 78q–1.

[9] *Supra* note 3.

[10] *Id.*

related to counterparty risk. FICC responded that net worth requirements on their own, as illustrated by the Refco Securities LLC (''Refco'') case, do not protect against counterparty risk, particularly in an environment where trading activity is not linked to capital levels. In addition, FICC noted that the net worth requirement does not address the nature of the business that the member brings to FICC and its members. Howrey points out that NSCC has the ability to collect additional clearing fund deposits pursuant to its rules should it deem it necessary. The lack of explanation or clarification by NSCC on how the current deposit requirement is calculated reveals a pattern of arbitrary amounts being imposed on clearing firms. This arbitrary amount, argued Howrey, would then be added to the arbitrary amount which would be calculated by the proposed rule change. NSCC responded that it concurs that Rule 15 (Financial Responsibility and Operational Capability) could perhaps be used as a basis on which to charge an occasional clearing fund premium to cover the perceived systemic risk sought to be addressed by the proposed rule change. However, FICC and NSCC's management and user representative boards have chosen to address the charge systemically and include the premium as a stated additional charge in an effort to be clear to members about the types of activity and risks they are trying to address.

Man asserted that FICC's ability to grant exceptions based upon subjective judgments in undefined circumstances, however well intentioned, will undermine the confidence in the margin process. Thus, members should know what rules for granting exceptions will be applied. FICC and NSCC responded that such discretion would only be used to reduce or eliminate the premium, not to raise it, and that the situations where such discretion would be used are likely to be very fact and circumstances driven. Thus, it would be contrary to the principle and purpose of discretion to require that NSCC and FICC adopt in advance of the event, detailed criteria, circumstances, and procedures for exercising such discretion. However, as discussed further below, FICC and NSCC amended their proposed rule changes to alleviate this concern and others expressed by the commenters.

IV. FICC and NSCC Amendments

To address certain concerns expressed in the comment letters and by others, FICC and NSCC amended the proposed rule changes as set forth below.

1. FICC

FICC has amended its proposed rule change to exclude from the premium calculation the look back provisions of the GSD clearing fund formula's Receive/Deliver and Repo Volatility components (''Excess Capital Premium Calculation Amount'')[11] with respect to the computation of the clearing fund requirement used in both the numerator of the ratio and in the Excess Capital Differential.[12]

FICC has also amended its proposed rule change to clarify that it may at its discretion: (i) Collect an amount less than the Excess Capital Premium (including no premium) and (ii) return all or a portion of the Excess Capital Premium if it believes that the imposition or maintenance of the Excess Capital Premium is not necessary or appropriate.[13]

In order to allow members time to effect any necessary operational or systems changes, FICC's proposed rule change will become effective on the first Monday following the 29th day after which the Commission issues an order granting approval of the change.

2. NSCC

NSCC amended its proposed rule change to clarify that the Excess Capital Premium will be determined by multiplying: (a) The amount by which a member's base clearing fund requirement (that is the amount determined prior to the imposition of the Excess Capital Premium) exceeds the member's excess regulatory capital by (b) the member's ratio, expressed as a percent. The calculation of the base clearing fund requirement for purposes of determining both the ratio and the Excess Capital Premium will not take into account either (i) Market-maker domination charges or (ii) special charges, as determined pursuant to Procedure XV, that are imposed on a member as part of its base requirement. This adjusted clearing fund amount (*i.e.*, calculated clearing fund amount minus any market-maker domination or other special charges) used for purposes of calculating the Excess Capital Premium would be called the ''Calculated Amount.'' These charges are not included in the clearing fund premium calculation because NSCC recognizes that these types of charges already provide an additional reserve in the base clearing fund requirement against the risk of that position.

NSCC has also amended its proposed rule change to clarify that it may at its discretion: (i) Collect an amount less than the Excess Capital Premium (including no premium) and (ii) return all or a portion of the Excess Capital Premium if it believes that the imposition or maintenance of the Excess Capital Premium is not necessary or appropriate.[14]

In order to allow member's time to effect any necessary operational or systems changes, NSCC's proposed rule change will become effective on the first Monday following the 29th day after which the Commission issues an order granting approval of the proposed rule change.

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

After carefully considering the proposed rule changes as amended and all of the written comments received, the Commission finds that the proposed rule changes are consistent with the

[11] The adjusted clearing fund requirement is referred to in the amendment as the ''Excess Capital Premium Calculation Amount.'' It is defined by the amendment as the calculation of the member's Required Fund Deposit, which excludes consideration of the Average Offset Margin Amount and the Average Offset Repo Volatility Amount.

Excluding these look back components, known as the Average Post Offset Margin Amount (''POMA'') and the Average Repo POMA (and defined in the GSD's Rules as the Average Offset Margin Amount and the Average Offset Repo Volatility Amount, respectively), from the calculation of the proposed premium is expected to provide relief from the Excess Capital Premium to members whose current portfolios would have a lower clearing fund requirement than their clearing fund requirement with the look back would suggest.

[12] As defined by the amendment, ''Excess Capital Differential'' means the amount by which a netting member's Excess Capital Premium Calculation Amount exceeds its excess capital.

[13] FICC management will look to see whether the premium results from unusual or non-recurring circumstances where management believes it would not be appropriate to assess the premium. Examples of such circumstances are a member's late submission of trade data for comparison that would have otherwise reduced the margined position if timely submission had occurred or an unexpected haircut or capital charge that does not fundamentally change a member's risk profile. FICC has stated that these examples are intended to serve as guidelines and are intended to be illustrative but not limiting in nature as to when the premium will not be imposed.

[14] NSCC has identified the following guidelines or circumstances, which NSCC has stated are intended to be illustrative but not limiting in nature as to when the premium will not be imposed: (1) Where the premium results from charges applied with respect to municipal securities trades settling in CNS where the member has offsetting compared trades settling on a trade-for trade basis through DTC and (2) where management has determined that the premium results from an unusual or non-recurring circumstance where management believes it would not be appropriate to assess the premium. Examples of such circumstances are a member's late submission of trade data for comparison or trade recording that would have otherwise reduced the margined position if timely submission had occurred or an unexpected haircut or capital charge that does not fundamentally change a member's risk profile.

requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F).[15] Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that the approval of FICC and NSCC's rule changes is consistent with this section because it should help FICC and NSCC to assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible by allowing FICC and NSCC to more effectively manage risk presented by highly leveraged members [16] and thus avoid potential losses to FICC and to NSCC and their members.

When a member presents transactions for clearance and settlement through FICC or NSCC in an amount that is not supported by its excess regulatory capital, should the member fail, FICC, NSCC, or both if the member is a member of both FICC and NSCC would have to close out the failing member's open positions and assume the risk of loss. If the failing member's clearing fund deposit is insufficient to cover any such loss, the loss would be borne by FICC and/or NSCC and ultimately could be borne by the other members of the clearing agency(ies) from their collective clearing fund deposits.

All of the commenters in opposition to the proposed rule changes argued that the imposition of a clearing fund premium would place a disproportionate burden on smaller broker-dealers because they are generally less capitalized than the larger broker-dealers and not in a position to meet higher capital requirements that could result from the proposed rule changes. FICC and NSCC responded that the premium calculation is based on a ratio that is applied to all members equally and is meant to reflect the risk a member introduces to the clearing agencies. Section 17A(b)(3)(F)[17] provides that the rules of a clearing agency shall not permit unfair discrimination among participants in the use of the clearing agency. Because the premium calculation is applied to all members equally based on a ratio of each member's required clearing fund to its excess net capital, the Commission is not persuaded by the commenters' arguments. It should be noted that the proposed rule changes were prompted in part by the bankruptcy and wind-down of Refco, which was not a small broker-dealer.

All of the commenters opposing the proposed rule changes argued that the proposed rule changes would have anticompetitive effect and/or place an undue burden on competition in that smaller broker-dealers would be unable to meet the higher clearing fund obligations and would be forced out of business, and that that could result in less competition among broker-dealers. FICC and NSCC responded that the proposed rule changes are not barriers to entry to the brokerage business and that the Act does not provide broker-dealers with a right to be a direct member of a registered clearing agency. FICC and NSCC noted that a firm that is potentially affected by the proposed rule changes could (1) Retain or raise additional capital relative to the business it clears through the clearing agency, (2) limit the business it clears through the clearing agency so that the risk to which the clearing agency and its other members is exposed based upon such business is proportionate to the firm's excess regulatory capital, or (3) seek another firm through which to clear its business.

The Commission is not persuaded by the commenters' claims that the proposed rule changes are anticompetitive and/or will result in an undue burden on competition. While it is possible that the proposed rule changes will force some members of FICC and NSCC to discontinue their direct membership in FICC and/or NSCC, the Act does not provide broker-dealers with the right to be direct members in a clearing agency. Affected firms have a choice to raise excess regulatory capital or to limit their trading activities so that the risk to which the clearing agency and its other members is exposed is proportionate to the firm's excess regulatory capital. The Commission finds that the proposed rule changes should not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act in accordance with Section 17A(b)(3)(I).[18]

FICC and NSCC have requested that the Commission approve the proposed rule changes prior to the thirtieth day after publication of the notice of the amendment to the filing. The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the publication of notice because implementation of the proposed rule changes will allow FICC and NSCC to activate the systems which are necessary to implement the proposed rule changes which are integral to assuring the safeguarding of securities and funds which are in their custody or control or for which they are responsible. Additionally, the Commission notes that FICC and NSCC's amendments were in large part in response to comments it received.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Numbers SR–FICC–2006–03 and SR–NSCC–2006–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Numbers SR–FICC–2006–03 and SR–NSCC–2006–03. These file numbers should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 Section, 100 F Street, NE., Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal offices of FICC and NSCC and on FICC's Web site at *http://www.ficc.com/gov/gov.docs.jsp?NS-query* and on NSCC's Web site at *http://*

[15] 15 U.S.C. 78q-1(b)(3)(F).

[16] A highly leveraged member is identified as one whose regulatory and excess capital are substantially less than it's clearing fund requirements.

[17] 15 U.S.C. 78q-1(b)(3)(F).

[18] 15 U.S.C. 78q-1(b)(3)(I).

www.nscc.com/legal/. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Numbers SR–FICC–2006–03 and SR–NSCC–2006–03 and should be submitted on or before October 12, 2006.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule changes (File Nos. SR–FICC–2006–03 and SR–NSCC–2006–03) be and hereby are approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[20]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 06–7844 Filed 9–20–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54451; File No. SR–NASD–2006–104]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change To Reflect Nasdaq's Complete Separation From NASD Upon the NASDAQ Stock Market LLC's Operation as a National Securities Exchange for Non-Nasdaq Exchange-Listed Securities

September 15, 2006.

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 September 5, 2006, the National Association of Securities Dealers, Inc. (''NASD'') 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 NASD. On September 14, 2006, NASD submitted Amendment No. 1 to the proposed rule change.[3] 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

NASD is proposing to: (1) Delete The Nasdaq Stock Market Inc.'s (''Nasdaq'') By-Laws and amend the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (''Delegation Plan''), NASD By-Laws, NASD Regulation, Inc. By-Laws, NASD Dispute Resolution, Inc. By-Laws, and NASD rules to reflect Nasdaq's separation from NASD upon the operation of the Nasdaq Exchange as a national securities exchange for non-Nasdaq exchange-listed securities; (2) amend NASD rules relating to quoting and trading otherwise than on an exchange in non-Nasdaq exchange-listed securities to reflect changes in the services provided by NASD in this regard; and (3) expand the scope of the NASD/Nasdaq Trade Reporting Facility rules to include trade reporting in non-Nasdaq exchange-listed securities.

The text of the proposed rule is available on the NASD Web Site (*http://www.nasd.com*), on the Commission's Web Site at (*http://www.sec.gov*), at the NASD Office of Secretary and at the Commission's Public Reference Room. All NASD rules that do not have rule text changes specified remain unchanged and effective for all NASD members.

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 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 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

On June 30, 2006, the Commission approved proposed rule change SR–NASD–2005–087, which, among other things, amended NASD's Delegation Plan, By-Laws, and NASD rules to reflect the Nasdaq Exchange's operation as a national securities exchange for purposes of Nasdaq-listed securities.[4] Specifically, to facilitate an orderly transition and minimize any potential disruption to the marketplace, for a transitional period that commenced on August 1, 2006, the Nasdaq Exchange has been operating as an exchange for purposes of Nasdaq-listed securities only, while Nasdaq continues to perform its current obligations under the NASD's Delegation Plan with respect to non-Nasdaq exchange-listed securities.[5] Pursuant to SR–NASD–2005–087 and under the Delegation Plan, Nasdaq, as a subsidiary of NASD, continues to perform during this transitional period only those functions relating to over-the-counter (''OTC'') quoting, trading, and execution of non-Nasdaq exchange-listed securities. As such, Nasdaq no longer performs functions relating to Nasdaq-listed securities pursuant to delegated authority from NASD.

The proposed rule change described herein provides amendments to NASD rules to reflect Nasdaq's complete separation from NASD upon the operation of the Nasdaq Exchange as a national securities exchange for purposes of non-Nasdaq exchange-listed securities in addition to Nasdaq-listed securities. In addition, the proposed rule change amends the current NASD rules for quoting and trading otherwise than on an exchange in non-Nasdaq exchange-listed securities to reflect the manner in which NASD would be satisfying its regulatory obligations under the Act and the rules thereunder on a temporary basis until the Alternative Display Facility (''ADF'') is able to satisfy those obligations. Further, this proposed rule change reflects NASD's continued participation in the ITS Plan.[6] This is one of the conditions that must be met before Nasdaq can operate as an exchange for non-Nasdaq exchange-listed securities.[7] Finally, the proposed rule change expands the scope of the NASD/Nasdaq Trade Reporting

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, NASD clarifies that (1) The effective date of the proposed rule change will be the date upon which The NASDAQ Stock Market LLC (''Nasdaq Exchange'') operates as an exchange for non-Nasdaq exchange listed securities, which the Nasdaq Exchange anticipates will be in November 2006; (2) the NASD's Market Regulation Committee will perform substantially the same functions as performed by the Nasdaq's Quality of Markets Committee; and (3) the proposed rule change reflects NASD's continued participation in the Intermarket Trading System (''ITS'') Plan.

[4] *See* Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (File No. SR–NASD–2005–087).

[5] The Commission approved the Nasdaq Exchange application on January 13, 2006. *See* Securities Exchange Act Release No. 53128 (Jan. 13, 2006), 71 FR 3550 (Jan. 23, 2006) (File No. 10–131). See also Securities Exchange Act Release No. 54085 (June 30, 2006), 71 FR 38910 (July 10, 2006), which modified the conditions set forth in the Nasdaq Exchange Approval Order to allow the Nasdaq Exchange to operate as a national securities exchange solely with respect to Nasdaq-listed securities.

[6] *See* Amendment No. 1.

[7] *See id.*