a requirement under the Corporate Financing Rule for members to obtain an Underwriting Activity Report will prevent fraudulent and manipulative acts and practices, promote just and equitable principals of trade, and protect investors and the public interest.

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

The NASD 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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 the file number in the caption above and should be submitted by April 1, 1997.

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

The Commission finds that the NASD's proposal is consistent with the Act and the rules and regulations thereunder applicable to a registered national securities association. Specifically, the provisions of Section 15A(b)(2) of the Act which requires that an association enforce compliance with Securities Exchange Act Rules in addition to the rules of the association. The Commission believes that the NASD proposal will enforce and facilitate compliance by NASD members with the requirements of Regulation M, SEC Rules 100 through 105.

In addition, the Commission finds that the NASD's proposal is consistent with the provisions of Section 15A(b)(6) of the Act which requires, in part, that an association have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in general, to protect investors. The Commission believes that the NASD's proposal is consistent with Section 15A(b)(6) of that Act in that the amendments to the Nasdaq and OTCBB Rules, in addition to the establishment of a requirement for members to an Underwriting Activity Report, provide a regulatory framework that will assist members in complying with the obligations under Regulation M. The Commission, therefore, finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change and Amendment No. 1 (SR–NASD–97–15) be and hereby is approved. The proposed rule change is effective March 4, 1997, with the exception of the provisions Rule 4623 and Rule 5460 that implement the notification requirements adopted under Regulation M with respect to penalty bids and syndicate covering transactions that will become effective on the date that the notification requirements under SEC Rule 104 become effective.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5979 Filed 3–10–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38354; File No. SR–NASD–97–13)

February 28, 1997.

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 the Elimination of the NASD's Excess Spread Rule Applicable to Market Maker Quotations in Nasdaq SmallCap Securities

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 February 24, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') 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 the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

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

The NASD proposes to amend NASD Rule 4613(d) to exclude market maker quotations in Nasdaq SmallCap securities from coverage under the Rule. As a result, Rule 4613(d) will apply only to quoted spreads by registered market makers in Nasdaq National Market securities. The text of the proposed rule change is as follows [new text is italicized; deleted text is bracketed]:

* * * * *

NASD Rule 4613 Character of Quotations

(d) Reasonably Competitive Quotations

A registered market maker in a *Nasdaq National Market* security [listed on The Nasdaq Stock Market] will be withdrawn as a registered market maker and precluded from re-registering as a market maker in such issue for 20 business days if its average spread in the security over the course of any full calendar month exceeds 150 percent of the average of all dealer spreads in such issue for the month. *This subparagraph shall not apply to market makers in Nasdaq SmallCap securities.*

(1) If a registered market maker has not satisfied the average spread requirement set forth in this subparagraph (d) for a particular Nasdaq *National Market* security, its registration in such issue shall be withdrawn commencing on the next business day following the business day on which the market maker was sent notice of its failure to comply with the requirement. A market maker may request reconsideration of the withdrawal notification. Requests for reconsideration will be reviewed by the Market Operations Review Committee, whose decisions are final and binding on the members. A request for

[6] 17 U.S.C. § 78s(B)(2) (1988).

[7] 17 CFR 200.30–3(a)(12) (1996).

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

reconsideration shall not operate as a stay of the withdrawal or toll the twenty business day period noted in subparagraph (d) above.

(2)–(3) 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, the 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 III below. The 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 January 16, 1997, the Securities and Exchange Commission (''SEC'' or ''Commission'') approved modifications to NASD Rule 4613(d) on a temporary basis through July 1, 1997.[3] Specifically, Rule 4613(d), which is commonly known as the NASD's ''excess spread rule,'' presently provides that registered market makers in securities listed on The Nasdaq Stock Market (''Nasdaq'') shall be precluded from being a registered market maker in that issue for 20 business days if its average spread in the security over the course of any full calendar month exceeds 150 percent of the average of all dealer spreads in such issue for the month (''150% Excess Spread Rule'').[4]

As noted in the NASD's filing seeking approval of the 150% Excess Spread Rule on a temporary basis, the Rule is designed to help ameliorate the adverse consequences the 125% Excess Spread Rule may have had on the competitiveness and independence of quotations displayed on the Nasdaq market.[5] At the same time, the NASD and Nasdaq believe the 150% Excess Spread Rule strikes a reasonable balance between the need to eliminate any constraints that the 125% Excess Spread Rule may have placed on firms to adjust their quotations and the need to avoid fostering a market environment where registered market makers can maintain inordinately wide spreads and still receive the benefits of being a market maker, such as affirmative determination exemptions and preferential margin treatment.

Nevertheless, while Nasdaq and the NASD believe the 150% Excess Spread Rule will help to ensure that market makers maintain at least a minimal level of commitment to their issues, Nasdaq and the NASD believe it is prudent to not impose the Rule on a permanent basis until there is a substantial basis to conclude that the 150% Excess Spread Rule has not contributed to or fostered the same unintended consequences created by the former 125% Excess Spread Rule, such as the interdependence of market maker quote movements and the exacerbation of locked and crossed market situations. Accordingly, the SEC approved the NASD's proposal to implement the 150% Excess Spread Rule on a pilot basis through July 1, 1997. During the pilot period, Nasdaq and the NASD will analyze market maker quotation behavior to determine whether the 150% Excess Spread Rule has met its dual objectives of removing constraints on market maker quotation movements and ensuring some minimal level of commitment by market makers to their issues. Throughout the pilot period, Nasdaq and the NASD also will proactively explore whether there are other alternative means to achieve these objectives without reliance on a quotation-based evaluation criteria.[6]

The NASD and Nasdaq are proposing to exclude market maker quotations in Nasdaq SmallCap securities from coverage under NASD Rule 4613(d). This is because, unlike with Nasdaq National Market securities, Nasdaq does not presently calculate and display through the Nasdaq system the average spread of all market makers in Nasdaq SmallCap securities or a comparison of the size of an individual market maker's quoted spread in a Nasdaq SmallCap security relative to the average spread of all market makers in Nasdaq SmallCap securities.[7] Thus, Nasdaq does not presently provide market makers in SmallCap securities with any indication as to whether they are satisfying the requirements of the 150% Excess Spread Rule.

Accordingly, given the pilot nature of the 150% Excess Spread Rule and the length of time necessary to make system modifications to provide market makers in Nasdaq SmallCap securities with the ability to assess whether they are satisfying Rule 4613(d), the NASD and Nasdaq propose to eliminate market maker quotations in Nasdaq SmallCap securities from coverage under the 150% Excess Spread Rule. By excluding market maker quotations in Nasdaq SmallCap securities from the Rule, the NASD and Nasdaq will not be subjecting market makers in these securities to a performance requirement that market makers are incapable of monitoring. This is particularly important since failure to satisfy the requirement of the Rule results in the loss of registered market maker status for a period of 20 business days. In addition, for those Nasdaq National Market securities that have trading attributes similar to Nasdaq SmallCap securities, elimination of the 150% Excess Spread Rule for SmallCap securities will create a ''control group'' that will afford Nasdaq a better opportunity to evaluate the effects of the 150% Excess Spread Rule. The NASD and Nasdaq anticipate, however, that market makers in Nasdaq SmallCap securities will be subject to the same

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[3] *See* Securities Exchange Act Release No. 38180 (Jan. 16, 1997), 62 FR 3725 (Jan. 24, 1997) (order approving File No. SR–NASD–96–50).

[4] Previously, Rule 4613(d) provided that registered market makers in Nasdaq securities could not enter quotations that exceeded 125 percent of the average of the three narrowest market maker spreads in that issue (''125 percent test''), provided, however, that the maximum allowable spread shall never be less than ¼ of a point (''125% Excess Spread Rule'').

[5] The SEC found in its 21(a) Report on the NASD and Nasdaq that ''the interdependence of quotes mandated by the rule may deter market makers from narrowing their dealer spreads, because, once the spread is tightened, the rule in some instances precludes a market maker from widening the spread to earlier levels.'' *See* Appendix to Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and The Nasdaq Stock Market (''21(a) Report'') SEC, Aug. 8, 1996, at p. 98. As a result, the SEC found that the excess spread rule creates an economic incentive for market makers to discourage one another from narrowing their quotes, thereby interfering with the ''free flow of prices in the market and imped[ing] attempts by the market to reach the optimal competitive spread.'' *Id.* at p. 99 Accordingly, the SEC requested that the NASD ''modify the rule to eliminate its undesirable effects, or to repeal it. *Id.*

[6] The Commission has stated that ''[a]lthough the amended excess spread rule may reduce some of the anticompetitive concerns outlined in the 21(a) Report, the Commission believes that the amendment . . . may not completely satisfy the NASD's obligations under the Commission's Order with regard to the excess spread rule. Release No. 34–38180, supra note 3. Specifically, it may not remove completely the anticompetitive incentives for market makers to refrain from narrowing quotes because the market makers' quotation obligation continues to be dependent to some extent upon quotations of other market makers in the stock.'' *Id.*

[7] Market makers in Nasdaq National Market securities are able to assess whether they are satisfying the 150% Excess Spread Rule on a daily basis through use of the ''Primary Market Maker (PMM) Window'' of Nasdaq Workstation II. Specifically, while the PMM standards are used to determine the eligibility of market makers to an exemption from the NASD's short-sale rule, Nasdaq's programs that enable market makers to monitor their performance under the ''average spread'' component of the PMM standards also can be used by market makers to evaluate whether they have satisfied the requirements of the 150% Excess Spread Rule.

excess spread requirements, if any, as market makers in the Nasdaq National Market securities beyond July 1, 1997.

2. Statutory Basis

The NASD and Nasdaq believe that the proposed rule change is consistent with Section 15A(b)(6) of the Act. Among other things, Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of 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.

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

The NASD believes that the proposed rule change will not 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

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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. 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 NASD. All submissions should refer to File No. SR–NASD–97–13 and should be submitted by [insert date 21 days from date of publication].

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

After careful review, the Commission finds, for the reasons set forth below, that the NASD's proposal is consistent with the requirements of Section 15A of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, Section 15A(b)(6).

The Commission believes that it is reasonable for the NASD to remove application of the 150% Excess Spread Rule to market maker quotations in Nasdaq SmallCap securities because it is difficult for market makers to monitor their compliance with that Rule. This stems from Nasdaq's inability to calculate and display through the system the average spread of all market makers in Nasdaq SmallCap securities or a comparison of the size of an individual market maker's quoted spread in a Nasdaq SmallCap security relative to the average spread of all market makers in Nasdaq SmallCap securities.

The NASD also points out that application of NASD Rule 4613(d) may impose artificial constraints on market makers' quote movements.[8] According to the NASD, market makers may be less apt to adjust their quotes in response to market activity for fear that they will violate the rule and be subject to mandatory withdrawal for 20 business days. The Commission agrees that this is a possibility and prefers to eliminate the potential restraint on market maker quote movements to foster market maker competition, protect the price discovery process and preserve the integrity of quotations in Nasdaq SmallCap securities in furtherance of the objectives of Section 15A(b)(6). While the Commission approves removal of the applicability of the NASD's excess spread rule to market maker quotations in Nasdaq SmallCap securities, however, it expects the NASD to develop other means of stimulating and measuring sound market making performance for all Nasdaq stocks.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication in the Federal Register. By accelerating the effectiveness of the proposed rule change, market makers in Nasdaq SmallCap securities will not be subject to mandatory market maker registration withdrawals for 20 business days for noncompliance with the 150% Excess Spread Rule.[9] The Commission reiterates that the NASD should study alternative methods that would enhance market making performance while completely fulfilling the NASD's obligation regarding the excess spread rule before the August 8, 1997 deadline contained in the Commission's Order.[10]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NASD–97–13) is approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5983 Filed 3–10–97; 8:45 am]

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[Release No. 34–38364; File No. SR–PSE–97–06]

March 4, 1997.

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to Changing the Corporate Name From Pacific Stock Exchange Incorporated to Pacific Exchange

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 February 27, 1997, the Pacific Stock Exchange Incorporated (''PSE'' or ''Exchange'') 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 the Exchange. 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

The Exchange is proposing to amend its Article I, Section 1 of the

[8] See *infra* note 7 and accompanying text.

[9] Because the 150% Excess Spread Rule evaluates a market maker's spread over a full calendar month, February 1997 was the first month in which market maker spreads were evaluated pursuant to NASD Rule 4613(d). Accordingly, March 1997 will be the first month in which market makers will be subject to the mandatory market maker withdrawals for 20 business days for noncompliance with the Rule.

[10] *See* Release 34–38180, *supra* note 3 and Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 37538 (Aug. 8, 1996).

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.