

factually inaccurate or incomplete. This incomplete or inaccurate disclosure may raise regulatory and listing qualification issues (*i.e.*, whether the issuer is in compliance with all Nasdaq listing requirements, as set out in the Rule 4300 and 4400 Series), which Nasdaq staff would thoroughly investigate, *i.e.*, when a Nasdaq-listed company issues a press release making highly questionable claims of significant discovery. The Nasdaq company is unable to immediately substantiate the basis for the claims, which raises serious concerns with Nasdaq as to the accuracy of the company's public statement. Accordingly, Nasdaq staff determines that additional information from the issuer is required to evaluate whether the company's public statement is accurate or requires further clarification. The proposed amendments permit Nasdaq, upon the request of certain information, to halt trading so that it may determine whether continued trading is advisable once the information is received and reviewed.

Nasdaq is proposing to amend IM-4120-1 to clarify that all trading halts initiated under Rule 4120—not just those imposed to permit the dissemination of material news—generally last one half hour, but may last longer if necessary to permit the dissemination of material news or if the original or an additional basis under Rule 4120(a) exists for continuing the halt. Furthermore, the statement in IM-4120-1 that Nasdaq will keep denials of rumors confidential is deleted to reflect Nasdaq's policy of issuing press releases indicating that MarketWatch has reviewed unusual trading activity, has contacted the issuer, and is not initiating a halt because it has not been advised of a basis for doing so.⁷

The proposed amendments also include minor conforming changes to both Rule 4120 and IM-4120-1. For example, the procedures for halting trading have been consolidated into a revised Rule 4120(b)(4) in light of the inclusion of the additional bases for initiating trading halts. References in Rule 4120 and IM-4120-1 to the "Association" and "Market Regulation Department" have been replaced with references to "Nasdaq" and "MarketWatch Department" respectively, to reflect that Nasdaq has authority for trading halts under the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries. Changes to Rule 4120(b)(2) reflect that

issuers may notify MarketWatch of material news by facsimile, as well as by telephone—which is stated in the accompanying footnote to the rule but not in the rule text. Finally, references in Rules 6350(b) and 6430(b) to operational trading halts for ITS/CAES market makers have been changed to reflect that Rule 4120 will authorize Nasdaq to initiate trading halts for CQS market makers, as well as ITS/CAES market makers.

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, in that it is designated to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediment 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. As noted above, the proposed rule change will expand Nasdaq's authority to initiate regulatory trading halts when it learns of regulatory concerns (either through a regulatory trading halt by another market or incomplete or inaccurate disclosure from the issuer), and thus will prevent fraudulent practices and protect investors. The proposed rule changes also will broaden Nasdaq's authority to impose operational trading halts in the over-the-counter markets when market conditions so warrant, and thus will remove impediments to and perfect the mechanism of a free and open market.

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, 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. By order approve such proposed rule change, or
- B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 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 SR-NASD-97-60 and should be submitted by November 3, 1997.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39198; File No. SR-NASD-97-73]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval Proposed Rule Changes by the National Association of Securities Dealers, Inc. Relating to Rule 4612, Primary Nasdaq Market Maker Standards

October 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on September 30, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described

⁷ Note that under the proposed amendments, Nasdaq still is required to keep confidential all non-public information and use such information only for regulatory purposes.

⁸ 17 CFR 300.30(a)(12).

¹ 15 U.S.C. 78s(b)(1).

in Items I, II, and III below, which Items have been prepared by the Nasdaq Stock Market, Inc. ("Nasdaq"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Pursuant to the provisions of Section 19(b)(1) under the Act, Nasdaq, a wholly owned subsidiary of the NASD, is herewith filing a proposed rule change to extend a suspension of the Primary Nasdaq Market Maker qualification criteria ("PMM Standards") found in Rule 4612 (a) and (b) of the NASD Rules for all Nasdaq National Market securities for six months or until such earlier time when new PMM Standards can be adopted and implemented.

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

Nasdaq is proposing to extend a suspension of the existing PMM Standards until April 1, 1998 or until such earlier time that new PMM Standards can be adopted and implemented. The standards currently contained in NASD Rule 4612 have been suspended on a temporary basis since February of this year.² That suspension will expire after October 1, 1997.

The suspension was necessary because the previous numerical criteria used to establish Primary Nasdaq Market Maker status was rendered significantly less relevant due to implementation of the new SEC Order Execution Rules (*i.e.*, the Limit Order Display Rule and amendments to the Quote Rule). This is because the old PMM standards were based primarily on a market maker's quotes in relation to

the inside quote and the quotes of other market makers, and the ratio of executions to quote changes.³ Because the new SEC rules, implemented in January of this year, incorporate customer limit orders in a market maker's quote, a market maker's proprietary activity has become indistinguishable from its customer activity.

It was therefore determined that developing new PMM standards would be necessary. Nasdaq's Quality of Markets Committee and Nasdaq staff, in consultation with Commission staff, endeavored to develop new and meaningful PMM Standards as expeditiously as possible. The new PMM Standards are intended to more properly identify firms that are engaging in responsible market maker activity deserving of the benefits associated with being designated a Primary Nasdaq Market Maker, such as being exempt from the short sale rule. A detailed and comprehensive proposal was recently approved by the Board of Directors of The Nasdaq Stock market at its meeting in September 1997, and Nasdaq expects to submit new PMM Standards to the Commission in the form of a proposed rule change shortly.

Nasdaq believes this proposed rule change is consistent with Section 15A(b)(6) of the Act in that it is designed to prevent fraudulent and manipulative acts and facilitates transactions in securities. In particular, this temporary extension should provide market makers with certainty regarding whether they are entitled to an exemption under the rule which should promote market efficiency and enhance the orderliness of the market during a transition period. It should also help in reducing investor confusion at this time and thereby promote efficient and fair markets.

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, as amended.

³ Specifically, a Nasdaq market maker was deemed to be a Nasdaq Primary Market Maker if it met two of three criteria: (1) The market maker maintains the best bid or best offer as shown on Nasdaq no less than 35% of the time; (2) a market maker maintains a spread no greater than 102% of the average dealer spread; and (3) no more than 50% of a market maker's quotation changes occur without a trade execution. In addition, if a registered market maker meets only one of the above criteria, it may nevertheless qualify if the market maker accounts for volume at least 1½ times its proportionate share of overall volume in the stock.

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, 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 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 November 4, 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 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, promote just and equitable principals of trade, and in general, to protect investors. In addition, the Commission finds that accelerated approval of this proposal will continue to accommodate the new SEC Order Execution Rules while Nasdaq seeks to implement new standards applicable to market makers. The Commission notes, however, that while it is approving this proposed rule change, that it anticipates no delay in the filing of the proposed rule change by the NASD with respect to the newly developed PMM standards.

In approving this proposed rule change, the Commission notes that it has also considered the proposal's impact on efficiency, competition, and capital formation.⁴

The Commission, therefore, finds good cause for approving the proposed rule change prior to the thirtieth day

² See Securities Exchange Act Release No. 38294 (February 14, 1997), 62 FR 8289 (February 24, 1997) (order granting temporary accelerated approval of File No. SR-NASD-97-07).

⁴ 15 U.S.C. 78c(f).

after the date of publication of filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁵ that the proposed rule change, SR-NASD-97-73, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39197; File No. SR-NASD-97-68]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Syndicate Covering Transactions and Members' Obligations To Obtain an Underwriting Activity Report

October 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on September 8, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change and on September 17, 1997, the NASD filed Amendment No. 1. The proposed rule change and Amendment No. 1 are described in Items I, II, and III below, which Items have been prepared by NASD Regulation, Inc. ("NASD Regulation"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

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

NASD Regulation is proposing to amend NASD Rules 2710, 4624, and 6540. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

2700. Securities Distributions

2710. Corporate Financing Rule—Underwriting Terms and Arrangements

(a) Definitions

No change.

(b) Filing Requirements

(1) through (10)

No Change.

(11) Request for Underwriting Activity Report

Notwithstanding the availability of an exemption from filing under subparagraph (b)(7) of this Rule, a member acting as a manager (or in a similar capacity) of a distribution of a publicly traded subject security or reference security that is subject to SEC Rule 101 or an "actively-traded" security under SEC Rule 101 (except for a security listed on a national securities exchange) shall submit a request to the Corporate Financing Department for an Underwriting Activity Report with respect to the subject and/or reference security in order to facilitate compliance with SEC Rules 101, 103, or 104, and other distribution-related Rules of the Association. The request shall be submitted at the time a registration statement or similar offering document is filed with the Department, the SEC, or other regulatory agency, or, if not filed with any regulatory agency, at least two (2) business days prior to the commencement of the restricted period under SEC Rule 101. The request shall include a copy of the registration statement or similar offering document (if not previously submitted pursuant to subparagraph (b)(5) of this Rule). If no member is acting as managing underwriting of such distribution, each member that is a distribution participant or an affiliated purchaser shall submit a request for an Underwriting Activity Report, unless another member has assumed responsibility for compliance with this subparagraph. For purposes of subparagraphs (b) (11) and (12), SEC Rules 100, 101, 103, and 104 are rules of the Commission adopted under Regulation M and the following terms shall have the meanings as defined in SEC Rule 100: A distribution, A distribution participant, A reference security, A restricted period, and A subject security.

(12) Submission of Pricing Information

A member acting as a manager (or in a similar capacity) of a distribution [subject to subparagraph (b)(11)] of securities that are listed on a national securities exchange *and considered a subject security or reference security*

that is subject to SEC Rule 101 or an "actively-traded" security under SEC Rule 101 or a distribution of any other securities that are considered "actively-traded" under SEC Rule 101 shall provide written notice to the Market Regulation Department of NASD Regulation, Inc., no later than the close of business the day the offering terminates, that includes the date and time of the pricing of the offering, the offering price, and the time the offering terminated, which notice may be submitted on the Underwriting Activity Report.

(13) Information on Syndicate Covering Transactions

A member acting as a manager (or in a similar capacity) of a distribution of a publicly traded subject security or reference security that is subject to SEC Rule 101 or an "actively-traded" security under SEC Rule 101 shall, no later than thirty (30) days after the effective date of the offering, maintain information as required by the Corporate Financing Department of NASD Regulation, Inc. on the amount of the syndicate short position in a manner consistent with SEC Rule 17a-2.²

(c) Underwriting Compensation and Arrangements

No change.

4000. The NASDAQ Stock Market

4624. Penalty Bids and Syndicate Covering Transactions

(a) A market maker acting as a manager (or in a similar capacity) of a distribution of a Nasdaq security that is a subject or reference security under SEC Rule 101 shall provide written notice to the Corporate Financing Department of NASD Regulation, Inc. of its intention to impose a penalty bid on syndicate members or to conduct syndicate covering transactions pursuant to SEC Rule 104 prior to imposing the penalty bid or engaging in the first syndicate covering transaction. A market maker that intends to impose a penalty bid on syndicate members may request that its quotation be identified as a penalty bid on Nasdaq pursuant to paragraph (c) below.

(b) The notice required by paragraph (a) shall include:

(1) The identity of the security and its Nasdaq symbol;

(2) The date the member is intending to impose the penalty bid and/or conduct syndicate covering transactions; and

² The requirement in Rule 2710(b)(13) will expire no later than January 1, 2000.

⁵ 17 U.S.C. 78s(B)(2).

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).