

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.

[FR Doc. 97-27050 Filed 10-10-97; 8:45 am]

BILLING CODE 8010-01-M

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).

(3) The amount of the syndicate short position, in the case of syndicate covering transactions]

(c) Notwithstanding paragraph (a), a market maker may request that its quotation be identified as a penalty bid on Nasdaq [display] by providing notice to Nasdaq Market Operations, which notice shall include the date and time that the penalty bid identified should be entered on Nasdaq and, if not in writing, shall be confirmed in writing no later than the close of business the day the penalty bid identified is entered on Nasdaq.

(d) The written notice required by [paragraphs (a) and (c) of] this Rule may be submitted on the Underwriting Activity Report [by including the information required by subparagraphs (b)(1) and (b)(2) or paragraph (c)].

6500. OTC Bulletin Board Service

6540. Requirements Applicable to Market Makers

(a) No change.

(b) No change.

(1) Permissible Quotation Entries.

(A)–(C)—No change.

(D) Any member that intends to be a distribution participant in a distribution of securities subject to SEC Rule 101, or is an affiliated purchaser in such distribution, and is entering quotations in an OTCBB-eligible security that is the subject security or reference security of such distribution shall, unless another member has assumed responsibility for compliance with this paragraph:

(i) No change.

(ii) No change.

(iii) provide written notice to the Corporate Financing Department of NASD Regulation, Inc. of its intention to impose a penalty bid 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. Such notice shall include information as to the date the penalty bid or first syndicate covering transaction will occur [and the amount of the syndicate short position]; and

(iv) No change.

(E) The written notice required by subparagraphs (b)(1)(D) (i), (iii) and (iv) of this rule may be submitted on the Underwriting Activity Report provided by the Corporate Financing Department of NASD Regulation, Inc. [by including the information required by those subparagraphs.]

(F) No change.

(2) through (4) 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, NASD Regulation 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. 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

On April 1, 1997, NASD Rules designed to facilitate compliance with the SEC's Regulation M became effective.³ Rule 104 of Regulation M requires members acting as managing underwriters to notify the appropriate regulator of the market for the security in distribution of a member's intention to engage in syndicate short covering transactions. It is the understanding of NASD Regulation staff that the purpose of this requirement is to establish a database at the regulator of those offerings in which syndicate short covering transactions may have been conducted, thereby facilitating a study of syndicate short covering practices by the staff of the SEC. Because the Association has traditionally been responsible for regulating the permissible amount of over-allotment options that may be utilized to cover syndicate short positions in public offerings, NASD Regulation believes that the Association has a long-standing interest in developing information to assist it and the SEC in the regulation of the over-allotment process.

To allow NASD members to comply with their notification obligations under Rule 104, NASD Regulation developed a standardized form designated as the Regulation M Trading Notification. Both NASD Rule 4624 regarding The Nasdaq Stock Market and NASD Rule 6540 regarding the OTC Bulletin Board Service require that members include the amount of the syndicate short position on the Regulation M Trading Notification. This latter information is not required to be provided under SEC Rule 104 of Regulation M.

Members of the industry have expressed concern regarding their

ability to provide accurate data on the amount of a syndicate short position at the time the Regulation M Trading Notification is required to be submitted *i.e.*, prior to the first syndicate covering transaction. At that time, the member cannot generally provide accurate information as to the total amount of the syndicate short position.

While NASD Regulation believes it important to be able to collect accurate information on the amount of the syndicate short position in order to assist the SEC in its study of syndicate short covering activities, such information need not be immediately provided to the Association. In order to address the concerns of the industry, NASD Regulation is proposing to amend NASD Rule 4624 and NASD Rule 6540 to delete the current requirement to provide immediate information on the amount of syndicate short positions. In its place, NASD Regulation is proposing to amend Rule 2710, the Corporate Financing Rule, to establish a new requirement in Subparagraph (b)(13) that, no later than 30 days after the effective date of the offering, the managing underwriter shall maintain information as required by the Corporate Financing Department of NASD Regulation, Inc. on the amount of the syndicate short position and that such information be retained in the same manner as the managing underwriter's syndicate covering transaction records under SEC Rule 17a-2. Rule 17a-2 requires that a managing underwriter separately maintain information on stabilizing transactions and syndicate covering transactions. It is anticipated that the managing underwriter will maintain with its records of syndicate covering transactions, as required by Rule 17a-2, a record of the amount of the syndicate short position. NASD Regulation intends to require that the information to be retained by the managing underwriter consist of whether the syndicate short position was no greater than the over-allotment option, or whether a naked short position was less than 1%, between 1% and 5%, between 5% and 10%, or over 10% of the offering size. The proposed change to NASD Rule 2710 includes a sunset provision to eliminate the requirement to retain information on the amount of syndicate short positions at the conclusion of the study of syndicate short covering practices, but no later than January 1, 2000.

In addition, NASD Regulation is proposing to amend Subparagraph (b)(11) of Rule 2710 to conform its rule language to that of Subparagraph (b)(12) and to the Association's original intent

³ Securities Exchange Act Release No. 38360 (March 4, 1997), and amended Securities Exchange Act Release No. 38399 (March 14, 1997).

regarding the scope of that provision. The proposed rule change would clarify that the managing underwriter is required to request an Underwriting Activity Report with respect to a distribution of a security that is considered an "actively-traded" security under SEC Rule 101.⁴ Currently, the language of Subparagraph (b)(11) is misleading in that it only imposes this requirement with respect to subject or reference securities that are "subject to SEC Rule 101." Because "actively-traded" securities are exempt from SEC Rule 101, they are not considered "subject to" SEC Rule 101. In Notice to Members 97-10 (March 1997), announcing adoption of the amendments of the NASD to implement Regulation M, the NASD stated that the Underwriting Activity Report will indicate whether the security qualifies under SEC Rule 101 as an actively-traded security or for the one-day or five-day restricted periods." Thus, the proposed change to Subparagraph (b)(11) will make the rule language consistent with the Association's requirement that the managing underwriter request an Underwriting Activity Report for securities that are considered "actively-traded" under SEC Rule 101.

Moreover, NASD Regulation is proposing to amend Subparagraph (b)(11) to exclude exchange-listed securities from the requirement that the managing underwriter obtain an Underwriting Activity Report. Originally, it had been anticipated that the managing underwriter would be provided information on the value of average daily trading volume and market value of public float with respect to exchange-listed securities, in addition to securities included in The Nasdaq Stock Market, Inc. or quoted on the OTC Bulletin Board Service. However, since this information has not been available, the proposed rule change would eliminate the obligation of managing underwriters to request the Underwriting Activity Report with respect to exchange-listed securities. The managing underwriter of an offering of exchange-listed securities would, nonetheless, continue to be responsible under Subparagraph (b)(12) to advise the Market Regulation Department of information regarding the pricing and termination of the offering. Conforming amendments are made to Subparagraph (b)(12) in light of this proposed change

to Subparagraph (b)(11). Finally, Subparagraph (b)(12) is also proposed to be revised to clarify that the managing underwriter of any offering of securities considered "actively-traded" under SEC Rule 101 must also advise the Market Regulation Department of information on pricing and termination.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(2)⁵ of the Act in that the proposed rule change will enforce and facilitate compliance by NASD members with the requirements of SEC Regulation M.

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. 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 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 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, promote just and equitable principals of trade, and in general, to protect investors. In approving this proposed rule change, the Commission notes that it has also considered the proposal's impact on efficiency, competition, and capital formation.⁶

The Commission, therefore, finds good cause for approving the proposed rule change prior to the thirtieth day 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,⁷ that the proposed rule change, SR-NASD-97-68, be, and hereby is, approved.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97-27051 Filed 10-10-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39200; File No. SR-NYSE-97-25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., To Amend Its Rule 382 Relating to Carrying Agreements

October 3, 1997.

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 16, 1997, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or

⁴ 15 U.S.C. 78c(f).

⁷ 17 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(2).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁴ An "actively-traded" security is a subject or reference security with a value of average daily trading volume of at least \$1 million, which is issued by an issuer whose common equity securities have a public float of at least \$150 million.

⁵ 15 U.S.C. 78o-3.