Margaret H. McFarland,
Deputy Secretary.
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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39423; File No. SR–NASD–97–04]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto Regarding Excused Market Maker Withdrawals and Reinstatements

December 10, 1997.

On January 24, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') proposed rule changes [1] pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [2] and Rule 19b–4 thereunder.[3] The proposal amends NASD Rule 4619 (excused market maker withdrawals), NASD Rule 4620 (voluntary termination of market maker registrations), and NASD Rule 4730 (reinstatement of market makers that have been ''SOESed out of the Box'' [4] or that accidentally withdrew from a security). Notice of the proposed rule changes, including the substance of the proposal and Amendment No. 1 thereto, was published for comment in the **Federal Register**.[5] No comments were received. On December 3, 1997, the NASD filed with the Commission Amendment No. 2.[6] The Commission is hereby approving the proposed rule changes, including Amendment No. 1 thereto. In addition, the Commission is publishing this notice to solicit comments from interested persons on Amendment No. 2; the Commission hereby approves that amendment.

I. Description of Rule Changes

To ensure that market makers are complying with their obligation to maintain continuous, firm, two-sided quotations,[7] NASD Rule 4620 provides that a market maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for 20 business days. This rule is commonly referred to as the ''20-Day Rule.'' With respect to SOES, withdrawal from participation as a market maker in a Nasdaq National Market (''NNM'') security constitutes termination of registration as a market maker in that security for purposes of NASD Rule 4620. NASD Rule 4730(b)(6), an SOES rule, provides that for NNM securities a market maker will be suspended from SOES if its bid or offer has been decremented to zero due to SOES executions. If this occurs, the market maker will be permitted a standard grace period (*i.e.*, five minutes) within which to take action to restore a two-sided quotation in the security for at least one normal unit of trading. A market maker that fails to reenter a two-sided quotation in an NNM security within the allotted time will be deemed to have withdrawn as a market maker. Unless the market maker's withdrawal is ''excused,'' that market maker may not reenter SOES as a market maker in that security for twenty (20) business days.[8] When a market maker is deregistered from a security because it failed to restore its quotation, it is referred to as being ''SOESed out of the Box.'' [9]

Notwithstanding NASD Rules 4620 and 4730(b)(6), NASD Rule 4619 permits market makers to obtain an ''excused'' withdrawal in certain limited circumstances. Under NASD Rule 4619, a market maker may withdraw quotations in a security without being subject to the 20-Day Rule or NASD Rule 4730(b)(6) (for SOES market makers). A market maker that withdraws from a security for a reason permitted by NASD Rule 4619 may re-enter its quotes once the circumstances justifying the withdrawal no longer exist.[10] The rule currently allows excused withdrawals for:

(1) Physical circumstances beyond the market maker's control (NASD Rule 4619(b));

(2) Demonstrated legal or regulatory requirements (*e.g.*, the market maker is in possession of material non-public information regarding the issue) (NASD Rule 4619(b));

(3) Religious holidays (provided the request is submitted five business days in advance of the holiday) (NASD Rule 4619(b));

(4) Vacations (provided the request is received 20 business days in advance of the vacation and is made by a market maker with three or fewer Nasdaq level 3 terminals) (NASD Rule 4619(b));

(5) A market maker that has withdrawn from an issue prior to the public announcement of a merger or acquisition and wishes to re-register in that issue pursuant to applicable NASD rules;

(6) Involuntary failures to maintain clearing arrangements (NASD Rule 4619(c)); and

(7) The duration of the ''cooling off'' periods mandated by certain rules under Regulation M under the Exchange Act (NASD Rule 4619(d)).

The SEC criticized the NASD's handling of excused withdrawal requests and the reinstatement of market makers that had been ''SOESed out of the Box'' in the SEC's 21(a) Report on the NASD and The Nasdaq Stock Market.[11] The SEC found, among other things, that the NASD had improperly granted waivers of the 20-Day Rule for market makers that were ''SOESed out of the Box'' and that the NASD had not followed its own rules when granting excused withdrawals. Until 1995, the 21(a) Report found, the practice of Nasdaq Market Operations was to grant SOES withdrawal waivers as a matter of course without inquiring into the reasons for the withdrawals. A market maker merely had to request the waive and Nasdaq Market Operations granted it. Beginning in 1995, Nasdaq Market Operations started to make some inquiry into the reasons for the SOES withdrawals, granting waivers based upon an examination of four factors.[12]

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[1] On September 30, 1997, the NASD submitted an amendment (''Amendment No. 1'') to the proposed rule change to make technical amendments to the text of the proposed rule change. *See* Letter from Robert E. Aber, Vice President and General Counsel, The Nasdaq Stock Market, Inc. (''Nasdaq''), to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated September 30, 1997.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] ''SOES'' refers to Nasdaq's Small Order Execution System.

[5] Securities Exchange Act Release No. 39218 (October 8, 1997) 62 FR 53675 (October 15, 1997).

[6] Letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated December 3, 1997 (''Amendment No. 2''). In Amendment No. 2, the NASD made certain technical changes to NASD Rules 4620 and 4730 as well as clarified certain issues involving NASD Rule 4730. These points are discussed in detail below.

[7] *See* NASD Rule 4613.

[8] NASD Rule 4730(b)(6).

[9] To avoid being ''SOESed out of the Box,'' members can elect not to have their quote size decremented (''no dec'') upon the execution of SOES orders, provided the market maker's quote size is equal to or greater than the applicable SOES tier size (*i.e.*, the maximum SOES order size). *See* NASD Rule 4730; *see also* Nasdaq *Subscriber Bulletin*, vol. 15, July 1997, at page 2. In the alternative, the market maker may use Nasdaq's auto-refresh feature, which automatically updates a market maker's quote after its quote size has been decremented. NASD Rule 4730(b)(2).

[10] *See* NASD Rule 4730(b)(7).

[11] *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, August 8, 1996, at p. 91–95.

[12] The factors were (1) the timeliness of the market maker's call to Market Operations; (2) the

These factors, however, are not generally relevant to the permissible reasons, as articulated in the NASD's rules, for granting excused withdrawal status.[13] Nor were these factors included in any filing made by the NASD with the Commission pursuant to Section 19(b) of the Exchange Act, as amendments or interpretations of its rules. The NASD's willingness to grant waivers for reasons other than those listed in the applicable rules,[14] allowed market makers to avoid suspension penalties.

As a result, the SEC stated in its 21(a) Report that:

> [t]he NASD's failure to enforce its excused withdrawal rules has fostered an environment that allowed market makers to avoid their responsibilities to maintain continuous quotes in the securities in which they made markets. Market makers were able to withdraw voluntarily from SOES beyond the permitted five-minute window, or otherwise withdraw from the market during periods of volatility without substantial risk that the NASD will enforce a twenty-day suspension.[15]

The Commission also found that the NASD did not place administration of the excused withdrawal rule with its enforcement or regulatory staff, but rather with its market and trading services staff. The Commission noted that the excused withdrawal rule ''should be administered from a regulatory standpoint.''[16]

Accordingly, to ensure that market makers are not able to avoid or circumvent their market making obligations through inappropriate excused maket maker withdrawals or inappropriate market maker reinstatements, the NASD submitted this rule proposal. As detailed below, the proposal makes changes in the following areas:

(1) Bases for excused withdrawals;

(2) Market maker reinstatements upon being ''SOESed out of the Box'' or after accidental market maker withdrawals; and

(3) The jurisdiction of the Market Operations Review Committee (''MORC'') over excused market maker withdrawals and reinstatements.

By modifying the rules to reflect better the operational realities of the marketplace, as well as establishing more objective standards for the reinstatement of market makers that either have been ''SOESed out of the Box'' or have accidentally withdrawn from a security, the NASD believes that the proposed modifications are responsive to the deficiencies noted in the Commission's 21(a) Report.

A. Bases For Excused Withdrawal

The proposed changes to NASD Rule 4619 are intended to bring the rule more in line with the realities of the marketplace. NASD Rule 4619(b) presently provides that excused withdrawal status may be granted for a variety of reasons provided that certain conditions, with are discussed above, are satisfied. While the NASD continues to believe that it is critical for the maintenance of the integrity of the market for Nasdaq to grant excused withdrawals only when warranted, particularly in light of the Commission's 21(a) Report, the NASD contends that the present excused withdrawal rule is not broad enough to encompass all of the legitimate reasons for granting an excused withdrawal. The NASD also believes that the time parameters for advance notice of vacations and religious holidays are unnecessarily long.

Accordingly, the NASD proposes a number of amendments to NASD Rule 4619(b). First, excused withdrawals may be granted for ''circumstances'' beyond the market maker's control instead of for just ''physical circumstances'' beyond its control as is currently the case. With this amendment, unpredictable events, such as jury duty, bomb threats, the birth of a child, or a sudden illness, could be used as a basis for an excused withdrawal. Second, requests for excused withdrawals based on vacations (currently 20 days) and religious holidays (currently five days) may be submitted one business day in advance of the proposed withdrawal. Requests for excused withdrawals based on legal or regulatory requirements will continue to be made in writing, although Nasdaq acknowledges that counsel to market makers often do not want to disclose the specific legal basis for their clients' withdrawal requests, particularly when the basis for the withdrawal is that the market maker is in possession of material, non-public information. In this connection, Nasdaq would continue its current practice of apprising NASD Regulation, Inc. of all such requests.[17]

B. Reinstatement of Market Makers Upon Being ''SOESed Out of the Box'' and for Accidental Withdrawals

1. Reinstatements Upon Being ''SOESed Out of the Box''

The proposed rule changes to NASD Rule 4730 are designed to ensure that a market maker is not reinstated without the required 20 day suspension unless the market maker withdrew for an excused reason. Specifically, the proposed changes to NASD Rule 4730 provide that a market maker can be reinstated under only one of two circumstances: (1) pursuant to NASD Rule 4730(b)(7), the market maker obtains an excused withdrawal pursuant to NASD Rule 4619; or (2) the market maker satisfies criteria set forth in NASD Rule 4730(b)(6). Under NASD Rule 4730(b)(6), a market maker can be reinstated after being SOESed out of the Box with respect to a particular security if:

(1) The market maker notifies Nasdaq Market Operations to request reinstatement within one hour of being ''SOESed out of the Box,'' and immediately thereafter provides written notification of the request;

(2) It was a Primary Market Maker at the time it was SOESed out of the Box;[18]

(3) The reinstatement would not result in the market maker's firm exceeding certain limitations on the

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volatility of the stock; (3) the liquidity of the market and the number of market makers in the stock; and (4) the number of Nasdaq terminals at the market makers to which the orders could be routed (which was relevant in cases where the market maker requested an excused withdrawal due to mechanical or electronic failure of a Nasdaq terminal).

[13] *See, e.g.*, NASD Rule 4619(b)(3), which states in part: ''[t]he withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not constitute acceptable reasons for granting excused withdrawal status.''

[14] For example, market makers were granted waivers after their SOES exposure was exhausted because they were away from their desks, working another order, or covering other trades' stocks. Appendix 21(a) Report at A–78 and note 217.

[15] Appendix to 21(a) Report at A–78.

[16] *Id.*, note 220.

[17] As discussed below, the proposal also adds a new paragraph (e) to Rule 4619 to give the MORC jurisdiction over proceedings to review denials of excused withdrawals or conditions imposed on reentry under Rule 4619.

[18] In Amendment No. 2, the NASD states that the Primary Market Maker standards currently contained in NASD Rule 4612 have been suspended on a temporary basis since February of this year. (*See* Securities Exchange Act Release Nos. 38294 (February 14, 1997) 62 FR 8289 (February 24, 1997); 39198 (October 3, 1997) 62 FR 53365 (October 14, 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 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. Because the new SEC rules, implemented in January of this year, are designed to incorporate customer limit orders in a market maker's quote, a market maker's proprietary activity has become indistinguishable from its customer activity.) As a result, all market makers are deemed Primary Market Makers until new standards can be implemented. Accordingly, all market makers similarly will be deemed to be in satisfaction of the Primary Market Maker provision in Rule 4730(b)(6)(A), until such time that new standards are imposed. (Footnotes incorporated into text.)

number of reinstatements per year;[19] and

(4) a designated Nasdaq officer determines that the withdrawal was not an attempt by the market maker to avoid its obligations to make a continuous two-sided market, taking into account factors including market conditions at the time, the frequency with which the firm has been SOESed out of the Box in the past, procedures adopted by the firm to avoid being SOESed out of the Box inadvertently, and the length of time before the firm sought reinstatement. Decisions to reinstate a market maker would be made by Nasdaq Market Operations staff and appeals of such decisions would be considered by the MORC.

2. Reinstatements for Accidental Withdrawals

There have been instances in the past when a market maker accidentally withdrew from a security because someone associated with the firm inadvertently typed the wrong symbol for the security or made a similar mistake. The NASD believes that it would be appropriate for the market maker to be reinstated in such circumstances, but NASD rules currently do not provide that market makers can be reinstated in these instances. As a result, the NASD proposal amends NASD Rule 4620 to permit reinstatements in such instances provided the withdrawal was clearly accidental and did not reflect an attempt by the market maker to avoid its market making obligations. Specifically, under the proposal, a market maker that accidentally withdraws as a market maker may be reinstated if:

(1) The market maker notifies Nasdaq Market Operations of the accidental withdrawal within one hour of such withdrawal, and immediately thereafter provides written notification of the withdrawal and request for reinstatement;

(2) It is clear that the withdrawal was inadvertent and the market maker was not attempting to avoid its market making obligations; and

(3) The market maker's firm would not exceed specific reinstatement limitations per year.[20]

If the above conditions are satisfied, Nasdaq will consider the following factors, among others, in deciding whether to grant a reinstatement in a given case:

(1) The number of accidental withdrawals by the market maker in the past as compared to other market makers making markets in a comparable number of stocks;

(2) The similarity between the symbol of the stock that the market maker intended to withdraw from and the symbol of the stock that the market maker actually withdrew from;

(3) Market conditions at the time of the withdrawal;

(4) Whether the withdrawal served to reduce the market maker's exposure to market risk; and

(5) The timeliness with which the market maker notified Nasdaq Market Operations of the error.

Determinations initially would be made by Nasdaq Market Operations staff and be subject to review by the MORC.

C. Jurisdiction of the MORC Over Excused Market Maker Withdrawals and Market Maker Reinstatements

Presently, appeals of Nasdaq staff determinations concerning excused withdrawal requests and market maker reinstatements are within the purview of the NASD's Qualifications Committee pursuant to NASD Rule 4730(b)(8). Pursuant to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries, however, The Board of Directors of Nasdaq has delegated its authority over such matters to the MORC. Accordingly, the NASD proposes to amend its Rules 4619, 4620, and 4730, to effectuate the transfer of jurisdiction over these matters from the Qualifications Committee to the MORC. Under the recently revised NASD Delegation Plan, the MORC's compositional and quorum requirements now provide for member diversity, as well as non-industry and public participation. Further, NASD Regulation is to receive weekly reports of MORC determinations;[21] it cannot, however, overturn MORC decisions.

II. Discussion

It is a fundamental premise of the dealer market that market makers stand willing to buy and sell securities at all times. Permitting market makers to evade this responsibility could reduce liquidity in the market and threaten the ability of investors to execute trades.[22] The Commission finds that proposed rule changes, by helping to ensure that market makers stand willing to buy and sell securities at all times, are consistent with the Exchange Act and in particular with Sections 15A(b)(6), 15A(b)(7), 15A(b)(9), 15A(b)(11) and 11A(a)(1)(C) of the Exchange 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, and processing information with respect to, and facilitating transactions in securities. Section 15A(b)(6) also requires that the rules of a national securities association be designed 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. Section 15A(b)(7) requires that the rules of the association provide that its members shall be appropriately disciplined for violations of the rules of association. Section 15A(b)(9) provides that the rules of the association may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 15A(b)(11) requires the NASD, as an association, to adopt rules governing the form and content of quotations relating

[19] In particular, under the proposal, including minor modifications made by Amendment No. 2, firms that simultaneously made markets in less than 250 securities during the previous calendar year could receive no more than four reinstatements per year. Firms that simultaneously made markets in more than 250 but less than 500 securities during the previous calendar year could receive no more than six reinstatements per year. Firms that simultaneously made markets in 500 or more securities during the previous calendar year could receive no more than 12 reinstatements per year.

Notwithstanding a market maker's exhaustion of these numerical limitations, in certain instances the designated Nasdaq officer may grant a reinstatement request if he or she finds that such action is necessary for the protection of investors or the maintenance of fair and orderly markets. In addition to making these findings, the designated officer also must determine that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market in instances where (1) a member firm experiences a documented problem or failure (other than a chronic failure within the firm's control) impacting the operation or use of any automated system operated by or for the firm or involving an automated system operated by Nasdaq; (2) the market maker is a manager or co-manager of a secondary offering from the time the offering is announced until ten days after it is complete; or (3) absent the reinstatement, the number of market makers in a particular issue is less than or equal to two or has otherwise declined by 50% or more from the number that existed at the end of the prior calendar quarter. if a market maker has a regular pattern of being frequently SOESed out of the Box, it may not be reinstated notwithstanding the number of market makers in the issue.

[20] In particular, firms that simultaneously made markets in less than 250 securities during the previous calendar year could receive no more than two reinstatements per year. Firms that simultaneously made markets in 250 or more but less than 500 securities could receive no more than three reinstatements per year. Firms that simultaneously made markets 500 or more securities could receive no more than six reinstatements per year. *See* minor modifications made by Amendment No. 2.

[21] *See* Appendix to 21(a) Report at A–78.

[22] *Id.* A–76–79.

to securities in the Nasdaq market. Such rules must be designed to produce fair and informative quotations, prevent fictitious and misleading quotations, and promote orderly procedures for collecting, distributing, and publishing quotations. Section 11A(a)(1)(C) provides that, among other things, it is in the public interest to assure the economically efficient execution of securities transactions and the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

The Commission believes that the proposed amendments will help to ensure that market makers will only be relieved of their market making obligations for legitimate reasons and that waivers of the ''20-day rule'' will only be made when Nasdaq has determined that the market maker receiving the waiver was not attempting to avoid its market making obligations when it withdrew or was withdrawn from the security. As a result, the proposed rule changes should increase market makers' compliance with their obligation to make continuous, two-sided markets and promote quote competition among market makers. Such competition among market makers should, in turn, enhance the integrity of the Nasdaq market, the best execution of customer orders, and the price discovery process for Nasdaq securities.

Thus, the proposed changes to NASD Rules 4620 (reinstatement for accidental withdrawal) and 4730 (reinstatement upon being SOESed out of the Box) are consistent with the Exchange Act and in particular with the following sections of that Act:

(1) Section 15A(b)(6) because they are designed to prevent market makers from failing to meet their market making obligations;

(2) Section 15A(b)(11), because they are designed to produce fair and informative quotations and prevent fictitious or misleading quotations by eliminating opportunities for market makers to back away from what otherwise may be effectively fictitious quotes; and

(3) Section 11A(a)(1)(C)(i)–(iii), because they are in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets; they assure fair competition among brokers and dealers by encouraging fair and accurate quotations, economically efficient executions based on these fair and accurate quotations; and they improve the availability to brokers, dealers, and investors of information concerning these fair and accurate quotations.

Further, the proposed changes to NASD Rule 4619 relating to the advance notice market makers must provide before withdrawing quotations in securities for an excused reason, as well as expanding those excused purposes, are consistent with the Exchange Act, and in particular with Section 15A(b)(9), because they do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, but merely add additional legitimate reasons for granting an excused withdrawal and make the time provisions of NASD Rule 4619 more fair and reasonable. Finally, the proposal to amend NASD Rules 4619, 4620, and 4730 to grant the MORC jurisdiction over proceedings brought by market makers seeking review of a:

(1) Denial of a reinstatement pursuant to NASD Rule 4619 or the conditions imposed on a reentry;

(2) Denial of a reinstatement pursuant to NASD Rule 4620(b); or

(3) Removal from SOES pursuant to NASD Rule 4730(6) or (7)

is consistent with the Exchange Act. In particular, these amendments are consistent with Exchange Act Section 15A(b)(7) in that they will help to ensure that NASD members are appropriately disciplined for violations of the rules of the association.

Finally, the Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The NASD's proposal, along with Amendment No. 1 thereto, was published in the **Federal Register** for the full statutory period.[23] In Amendment No. 2, the NASD merely makes a technical correction to NASD Rules 4620(b)(3)(B) and 4730(b)(6)(A)(iii)(b) and (c) to replace ''more than 250'' with ''250 or more'' and to replace ''more than 500'' with ''500 or more.'' In Amendment No. 2, the NASD also notes that the Primary Market Maker criterion in NASD Rule 4730(b)(6)(A) currently applies to all Nasdaq market makers. (*See* note 18). Finally, the NASD notes that the Nasdaq officers referred to in NASD Rule 4730(b)(6) are those senior officers specifically designated by the President of The Nasdaq Stock Market, Inc., for this purpose.[24] The list is maintained by the NASD Corporate Secretary's Office, and is part of the procedures of Nasdaq Market Operations. Consequently, lack of prior notice of these changes will not disadvantage any market participant. Based on the above, the Commission finds that there is good cause, consistent with the Exchange Act, to accelerate approval of Amendment No. 2.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. 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–97–04 and should be submitted by January 7, 1998.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (SR–NASD–97–04) be, and hereby is, approved.[25]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

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[23] *See* Securities Exchange Act Release No. 39218, *supra* note 5.

[24] This list coincides with the list of officers similarly appointed for adjudicating erroneous trades pursuant to NASD Rule 11890.

[25] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. The proposed rule change likely will enhance the efficiency and fairness of the process by which market maker withdrawals are handled by Nasdaq. It likely also will enhance the competition between market makers by strengthening enforcement of their requirement to display continually two-sided quotes. These rule changes should also lead to more accurate quotes being disseminated to the public. The net effect of approving the proposed rule change will be positive. 15 U.S.C. 78c(f).

[26] 17 CFR 200.30–3(a)(12).