

Washington, DC 20555, telephone (301) 415-8092; electronic mail address: cxb@nrc.gov.

Electronic Access

Final NUREG-1556, Vol. 12 is available electronically by visiting the NRC's Home Page (<http://www.nrc.gov/nrc/nucmat.html>).

Dated at Rockville, Maryland, this 31st day of January, 2001.

For the Nuclear Regulatory Commission.

Patricia K. Holahan,

*Chief, Rulemaking and Guidance Branch,
Division of Industrial and Medical Nuclear
Safety, NMSS.*

[FR Doc. 01-3136 Filed 2-6-01; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Master Materials Licenses

AGENCY: Nuclear Regulatory
Commission (NRC).

ACTION: Notice of availability of final
NUREG.

SUMMARY: The NRC is announcing the availability of the final NUREG-1556, Volume 10, "Consolidated Guidance About Materials Licenses: Program-Specific Guidance about Master Materials Licenses," dated December 2000.

The NRC is using Business Process Redesign techniques to redesign its materials licensing process, as described in NUREG-1539, "Methodology and Findings of the NRC's Materials Licensing Process Redesign." A critical element of the new process is consolidating and updating numerous guidance documents into a NUREG-series of reports. This final NUREG report is the 10th program-specific guidance developed to support an improved materials licensing process.

This guidance is intended for use by Federal applicants and licensees, and NRC staff. This document updates the guidance for applicants and licensees previously found in Policy and Guidance Directive PG 6-02, Revision 1: "Standard Review Plan (SRP) for License Application for Master Material License," dated September 25, 1997.

A free single copy of final NUREG-1556, Volume 10, may be requested by writing to the U.S. Nuclear Regulatory Commission, ATTN: Mrs. Carrie Brown, Mail Stop TWFN 9-F-31, Washington, DC 20555-0001. Alternatively, submit requests through the Internet by

addressing electronic mail to cxb@nrc.gov. A copy of the final NUREG-1556, Volume 10, is also available for inspection and/or copying for a fee in the NRC Public Document Room, 11555 Rockville Pike, Room 01-F21, Rockville, Maryland 20852.

FOR FURTHER INFORMATION, CONTACT:

Mrs. Carrie Brown, TWFN 9-F-31, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-8092; electronic mail address: cxb@nrc.gov.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43913; File No. SR-NASD-00-76]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Locked and Crossed Markets That Occur at or Prior to the Market's Open and the Market's Close

January 31, 2001.

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 January 5, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On January 22, 2001, the NASD, through Nasdaq, filed Amendment No. 1 to the proposed rule

change.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Nasdaq proposes to amend the provisions of NASD Rule 4613(e) regarding locked and crossed market conditions that occur prior to the market's opening and to add provisions relating to locked and crossed markets that occur prior to the market's close. Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in brackets.

* * * * *

4613. Character of Quotations

(a)-(d) No Change.

(e) Locked and Crossed Markets

(1) A market maker shall not, except under extraordinary circumstances, enter or maintain quotations in Nasdaq during normal business hours if:

(A) No Change.

(B) No Change.

(C) Obligations Regarding Locked/Crossed Market Conditions Prior to Market Opening *And Prior to Market Closing*

(i) Locked/Crossed Market Prior to 9:20 a.m.—For locks/crosses that occur prior to 9:20 a.m. Eastern Time, a market maker that is a party to a lock/cross because the market maker either has entered a bid (ask) quotation that locks/crosses another market maker's quotation(s) or has had its quotation(s) locked/crossed by another market maker ("party to a lock/cross") may, beginning at 9:20 a.m. Eastern Time, send through Nasdaq's SelectNet system (or its successor system) a message of any size that is at the receiving market maker's quoted price ("Trade-or-Move Message"). [Any market maker that receives a Trade-or-Move Message at or after 9:20 a.m. Eastern Time, and that is a party to a lock/cross, must within 30 seconds of receiving such message either: fill the incoming Trade-or-Move Message for the full size of the message; or move its bid down (offer up) by a quotation increment that unlocks/uncrosses the market.]

(ii) Locked/Crossed Market Between 9:20 and 9:29:59 a.m.—[If] *Before a*

³ See Letter from Jeffrey S. Davis, Assistant General Counsel, Nasdaq, to Sapna C. Patel, Attorney, Division of Market Regulation ("Division"), Commission, dated January 19, 2001 ("Amendment No. 1"). In Amendment No. 1, the Nasdaq made a minor technical correction to the rule text.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

market maker enters a quote that would lock[s] or cross[es] the market between 9:20 and 9:29:59 a.m. Eastern Time, the market maker must [immediately] first send through SelectNet to the market maker whose quote[s] it [is] would lock[ing] or cross[ing] a Trade-or-Move Message [a message] that is at the receiving market maker's quoted price and that is for at least [5,000] 10,000 shares ([in instances where there are] if multiple market makers [to a] would be locked/crossed, each one must receive a Trade-or-Move Message [the locking/crossing market maker must send a message to each party to the lock/cross] and the aggregate size of all such messages must be at least [5,000] 10,000 shares); provided, however, that if a market participant is representing an agency order (as defined in subparagraph (vi) of this rule), the market participant shall be required to send a Trade-or-Move Message(s) in an amount equal to the agency order, even if that order is less than [5,000] 10,000 shares. A market maker that sends a Trade-or-Move Message during these periods must then wait at least 15 seconds before entering a quote that would lock or cross the market. [A market maker that receives a Trade-or-Move Message during this period and that is a party to a lock/cross, must within 30 seconds of receiving such message either: fill the incoming Trade-or-Move Message for the full size of the message; or move its bid down (offer up) by a quotation increment that unlocks/uncrosses the market.]

(iii) *Locked/Crossed Market Between 3:50 and 3:59:59 p.m.*—Before a market maker enters a quote that would lock or cross the market between 3:50 and 3:59:59 p.m. Eastern Time, the market maker must first send through SelectNet to the market maker whose quote it would lock or cross, a Trade-or-Move Message that is at the receiving market maker's quoted price and that is for at least 10,000 shares (if multiple market makers would be locked/crossed, each one must receive a Trade-or-Move Message and the aggregate size of all such messages must be at least 10,000 shares); provided, however, that if a market participant is representing an agency order (as defined in subparagraph (vi) of this rule), the market participant shall be required to send a Trade-or-Move Message(s) in an amount equal to the agency order, even if that order is less than 10,000 shares. A market maker that sends a Trade-or-Move Message during this period must then wait at least 15 seconds before entering a quote that would lock or cross the market.

(iv) *A market maker that receives a Trade-or-Move Message must, within 15 seconds of receiving such message, either fill the incoming Trade-or-Move Message for the full size of the message, or, consistent with its Firm Quote obligations, move its bid down (offer up) by a quotation increment that restores or maintains an unlocked/uncrossed market.*

[(iii)] (v) A market maker that sends a Trade-or-Move Message pursuant to subparagraphs (e)(1)(C)(i), (ii), or (iii) [or (e)(1)(C)(ii)] of this rule must append to the message a Nasdaq-provided symbol indicating that it is a Trade-or-Move Message.

[(iv)] (vi) For the purposes of this rule "agency order" shall mean an order(s) that is for the benefit of the account of a natural person executing securities transactions with or through or receiving investment banking services from a broker/dealer, or for the benefit of an "institutional account" as defined in NASD Rule 3110. An agency order shall not include an order(s) that is for the benefit of a market maker in the security at issue, but shall include an order(s) that is for the benefit of a broker/dealer that is not a market maker in the security at issue.

(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, 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

1. Purpose

Nasdaq is proposing amendments to NASD Rule 4613(e) that would alter the obligations of market makers regarding locked and crossed markets that occur prior to the market's open and also prior to the market's close. Specifically, the proposal would: (1) Extend the application of NASD Rule 4613(1)(C)(ii) regarding locked/crossed markets before the market's open to the period just prior to the market's close as well; (2) require market makers that send a

Trade-or-Move Message do so at least 15 seconds before entering a locking/crossing quote rather than after entering a locking/crossing quote, as the rule currently requires; (3) increase from 5,000 to 10,000 the minimum number of shares that accompany a non-agency Trade-or-Move Message; and (4) reduce from 30 seconds to 15 seconds the amount of time within which the recipient of a Trade-or-Move Message must properly respond.

a. *Background.* On February 7, 2000, the Commission approved changes to NASD Rule 4613(e)⁴ that altered the obligations of market participants who enter locking/crossing quotations during the pre-market opening period.⁵ Under the NASD Rule 4613(e), a market participant that locks/crosses the market between 9:20 a.m. and 9:29:59 a.m. is then required to send a message(s), which has a "Trade-or-Move" designator ("Trade-or-Move Message"), to the parties it is locking/crossing. The Trade-or-Move modifier allows market participants to distinguish a Trade-or-Move Message (to which a receiving market maker is obligated to respond) from other pre-opening messages it may receive.

Currently, under NASD Rule 4613(e), the aggregate size of the Trade-or-Move Message must be at least 5,000 shares (i.e., the market participant must send a total of 5,000 shares to all parties it is locking/crossing) in the case of a proprietary quote, or the actual size of an agency order if that is the basis for the locking/crossing quote. NASD Rule 4613(e) further provides that a party that receives a Trade-or-Move Message must, within 30 seconds, either: (1) Trade in full with the incoming Trade-or-Move Message,⁶ (2) decline to trade with the incoming Trade-or-Move Message and move its quotation to a price level that unlocks or uncrosses the market; or (3) trade with a portion of the incoming Trade-or-Move Message and move its quotation to a level that unlocks or uncrosses the market. In essence, NASD Rule 4613(e) prohibits market participants from locking/crossing the

⁴ See Securities Exchange Act Release No. 42400 (February 7, 2000), 65 FR 7407 (February 14, 2000) (order approving File No. SR-NASD-99-23). On June 2, 2000, the Commission approved changes to NASD Rule 4613(e) relating to the allegations of market participants representing agency orders who enter locking/crossing quotations. See Securities Exchange Act Release No. 42896 (June 2, 2000), 65 FR 36747 (June 9, 2000) (order approving File No. SR-NASD-00-18).

⁵ A locked market occurs when the quoted bid price is the same as the quoted ask price. A crossed market occurs when the quoted bid price is greater than the quoted ask price.

⁶ The recipient of a Trade-or-Move Message that trades in full with the Trade-or-Move Message may move its quotation, but is not obligated to do so.

market during the 10 minutes before the opening, unless the party is willing to commit a significant number of shares.

Currently, unlike a market participant that actively locks or crosses the market after 9:20 a.m., a market participant that locks or crosses the market prior to 9:20 a.m. is not obligated to send a Trade-or-Move Message for a specific number of shares to all parties to the lock or cross.⁷ This distinction is necessary because market participants often do not actively monitor their quotations prior to 9:20 a.m., and, as a result, it is often difficult to determine which party actively locked or crossed the market prior to 9:20 a.m. For this reason, the obligations and rights of the parties to the lock or cross do not begin until 9:20 a.m.

b. *Rule Changes.* The implementation of the Trade-or-Move Message has substantially reduced the occurrence of locked/crossed markets prior to the open. It has, in addition, reduced the duration of locks/crosses that do occur. Although these improvements are encouraging, Nasdaq members have indicated that further improvement can be achieved by further modifying NASD Rule 4613(e). First and foremost, Nasdaq believes that the occurrence of locked/crossed markets prior to the open would be further reduced if market makers were required to send a Trade-or-Move Message before rather than after the lock or cross is entered. By preventing individual locks/crosses from occurring, Nasdaq hopes to further reduce the aggregate time that any market remains locked/crossed.

Accordingly, under the current proposal, market participants would be obligated to send the Trade-or-Move Message before entering a locking or crossing quotation during the applicable periods.⁸ Implicit in the sending of a Trade-or-Move Message is the representation by the sender of its determination of the appropriateness of the price sought to be reflected and the intention to enter such quote immediately following the response to the Trade-or-Move Message. Nasdaq will monitor the use of the Trade-or-Move Message by firms with respect to

the entry of quotes following the response to the message, to detect any patterns of failure to enter quotations that may be indicative of manipulative conduct.

Specifically, under the proposal, market participants will be required to send a Trade-or-Move Message and then wait 15 seconds *before* entering a quotation that would lock or cross another quote. The market participant receiving the Trade-or-Move Message would be required to respond to the message within 15 seconds, rather than within 30 seconds as currently allowed. The recipient of a Trade-or-Move Message can respond by trading in full and leaving its quote at the same price, trading in part and moving its quote to a price that would not lock or cross the Trade-or-Move price, or decline to trade and move its quote to a price that would not lock or cross the Trade-or-Move price.⁹ As is the case today, if a market maker receives a Trade-or-Move Message just prior to the open (*i.e.*, at or after 9:29:45 a.m.), the market maker must trade or move within 15 seconds, even if the end of that 15 seconds occurs after the market's open.¹⁰

Nasdaq also believes that increasing the economic significance of the Trade-or-Move Message would offset, and even further reduce, any potential for misuse that might arise by permitting market participants to send such messages without having first locked/crossed the market. Accordingly, Nasdaq proposes to increase the minimum size of the Trade-or-Move Message to 10,000 shares from the current 5,000 shares (subject to the agency order exception provided by the current rule). Consequently, when multiple market participants would be locked/crossed, each one must receive a Trade-or-Move Message and the aggregate size of all such messages must equal 10,000 shares (also subject to the agency order exception).

Finally, given the positive effect that Trade-or-Move has had on resolving potential locked and crossed markets at and immediately before the market's opening, Nasdaq proposes to expand its application to include the ten-minute period preceding the market's close (3:50 p.m. to 3:59:59 p.m.). Due to its volatility, this period is well-suited to the application of the Trade-or-Move

Message and its related regulatory requirements to minimize the potential for locked or crossed markets. Nasdaq believes that the Trade-or-Move Message will facilitate the entry of quotes that more accurately reflect the current state of the market.

The Trade-or-Move Message used prior to the close would operate in the same manner as is currently proposed for prior to the open, with one exception. Prior to the market's open, the market participant receiving a Trade-or-Move Message has no liability under the NASD's firm quote rule (NASD Rule 4613(b)), or under the SEC's firm quote rule (Rule 11Ac-1 under the Act). Thus, a market maker is permitted to move its quote without trading upon the receipt of what, during market hours, would be a SelectNet "liability" order. Prior to the market's close, however, a Trade-or-Move Message will be considered a liability order. Therefore, unlike during the earlier period, a market participant that receives a Trade-or-Move Message prior to the close may move its quote or trade with just a portion of the Trade-or-Move Message only if doing so is consistent with its firm quote obligations under the NASD and SEC rules.¹¹

c. *Examples of Rule Operation.* The following are examples of how the proposed rule would work. At 9:21 a.m., MMA plans to lock four market participants—MMB, MMC, MMD and MME—each quoting 1,000 shares at 20. Because the lock occurred after 9:20 a.m., MMA is required to send Trade-or-Move Messages in an aggregate amount of 10,000 shares to these four market makers at least 15 seconds before entering the locking quote. Accordingly, MMA sends a Trade-or-Move Message for 2,500 shares to MMB, who declines and moves (MMB must move at least one increment away from the locking price). MMC receives a 2,500 share order, fills it partially (1,000), and, as required, moves its quote at least one trading increment away from the locking price. MMD receives a message for 2,500 shares, fills the message in full, and then moves down one trading increment below the locking price, although MMD is not obligated to move its quote. MME receives a 2,500-share

⁷ However, beginning at 9:20 a.m., any party to a lock/cross may send a Trade-or-Move Message to any other party to the lock/cross. See NASD Rule 4613(e)(1)(C)(i).

⁸ Market participants will continue to utilize SelectNet to send Trade-or-Move Messages to market participants that would be locked or crossed by the entry of the intended quote. The Trade-or-Move Message will continue to carry the special identifier "trd or mov" for ease of recognition and will also continue to constitute a valid offer to buy or sell the number of shares contained in the message that may be accepted by the recipient in whole or in part, subject to the recipient's firm quote obligations.

⁹ During market hours, the recipient's ability to decline to trade with the Trade-or-Move Message would be subject to the recipient's firm quote obligations.

¹⁰ If, however, a market maker wishes to enter a locking/crossing quote at or after 9:30:00, the market maker would be required to use reasonable means to avoid locking/crossing the market by, for example, sending a SelectNet message to the party (or parties) it will lock/cross. See NASD Notice to Members 97-49.

¹¹ The proposed changes to NASD Rule 4613(e) are designed to address conditions that exist today in Nasdaq. Nasdaq hopes that the implementation of the Nasdaq National Market Execution System ("NNMS"), currently scheduled for after the full implementation of the decimalization for trading of Nasdaq securities, will further diminish the occurrence and duration of locked and crossed markets in Nasdaq and perhaps obviate the need for this rule. Nasdaq will carefully monitor the operation of NASD Rule 4613(e) in the NNMS and propose any changes necessitated by NNMS.

message, and fills it completely. MME is permitted to remain at her quote, but is not required to do so; like MMD, MME may move down one trading increment below the locking price. If MME remains at her quote, MMA could send another Trade-or-Move Message to MME, who could fill the message in full and remain at her quote, trade with a portion of the message and move her quote, or decline to trade with the message and move her quote.

As a second example, assume that at 9:18 a.m., MMW and MMX are bidding 20, and MMY and MMZ enter offer prices of 19, thus crossing the market. Because it is before 9:20 a.m., no Trade-or-Move Messages may be sent yet. At 9:20 a.m., each of the four market participants would have the right to send Trade-or-Move Messages of any size to either of the two market participants crossing them. Any party not filling such an order in full within 15 seconds would have to move its quote at least one trading increment beyond the crossing price, 19, to restore an unlocked/uncrossed market.

Finally, assume that at 3:51 p.m., MMA plans to lock two market participants—MMB and MMC—each quoting 2,000 shares at 10.¹² Because the lock would occur between 3:50 p.m. and 3:59:59 p.m., MMA is required to send a Trade-or-Move Message via SelectNet for a total of 10,000 shares to MMB and MMC at least 15 seconds before entering the locking quote. MMA sends a Trade-or-Move Message for 5,000 shares to MMB. MMB may either trade in full and stay at 10, trade in part and move, or decline move (MMB must move at least one increment away from the locking price).¹³ If MMB chooses to trade in full and remain at 10, MMA could send another Trade-or-Move Message to MMB. MMC receives a 5,000-share order, fills the order partially (1,000 shares), and, as required, moves its quote at least one trading increment away from the locking price.

d. *Conclusion.* In sum, the Nasdaq believes that the proposal provides a strong impetus to avoiding locked or crossed markets near the open and the close, while providing a mechanism for the prompt adjustment of quotations to more accurately reflect the state of the market at that point in time. Moreover, the Nasdaq believes that the change in

response time to the Trade-or-Move Message and the increased size the message will enhance the effectiveness of the rule both before the open and the close of the market, while providing the predictability needed to facilitate the programming of market participants systems to comply with the rule.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6)¹⁴ and section 11A(a)(1)(C)¹⁵ of the Act. Section 15A(b)(6) requires that the rules of a registered national securities association are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 11A(a)(1)(C) provides, in relevant part, that is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (1) Economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors or information with respect to quotations for and transactions in securities; (4) the practicability of brokers executing investors orders in the best market; and (5) an opportunity for investors orders to be executed without the participation of a dealer.

Nasdaq believes that the amendments to NASD Rule 4613(e) are consistent with section 15A(b)(6) and section 11A(a)(1)(C). By attempting to resolve locks and crosses at the market opening and closing, Nasdaq believes that the proposal will ensure the fair and orderly operation of Nasdaq and the protection of investors, as its purpose is to limit the disruptions to the Nasdaq market and the potential for harm to investors.

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.

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. 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 its finds such longer period to be appropriate and publishes 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.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 File No. SR-NASD-00-76 and should be submitted by February 28, 2001.

¹² Nasdaq revised the following examples to eliminate references to the customer limit orders. Telephone conversation between Jeffrey S. Davis, Assistant General Counsel, Nasdaq, and Yvonne Fraticelli, Special Counsel, Division, Commission, on January 26, 2001.

¹³ MMB's ability to decline to trade with the message is subject to MMB's firm quote obligations.

¹⁴ 15 U.S.C. 78o-3(b)(6).

¹⁵ 15 U.S.C. 78k-1(a)(1)(C).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-3112 Filed 2-6-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43907; File No. SR-NASD-01-01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend NASD Rule 4330(f) To Require a Nasdaq Issuer To Apply for Initial Inclusion Following a Reverse Merger With a Non-Nasdaq Entity

January 30, 2001.

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 January 9, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by 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

Nasdaq has filed with the Commission a proposed rule change to amend NASD Rule 4330(f) to require a Nasdaq issuer to apply for initial inclusion following a reverse merger with a non-Nasdaq entity. Nasdaq also proposes to make conforming changes to IM-4300, Interpretive Material Regarding Future Priced Securities.³ Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in brackets.

* * * * *

IM-4300. Interpretive Material Regarding Future Priced Securities

* * * * *

[Change of Control and Change in Financial Structure] Reverse Merger

NASD Rule 4330(f) provides: [Nasdaq shall require a Nasdaq SmallCap Market issuer to comply with all applicable requirements for initial inclusion under this Rule 4300 Series and shall require a Nasdaq National Market issuer to comply with all applicable requirements for initial inclusion under the Rule 4300 Series and Rule 4400 Series in the event that such issuer enters into a merger, consolidation, or other type of acquisition with a non-Nasdaq entity (including domestic and foreign corporations and limited partnerships), which results in a change of control and either a change in business or change in the financial structure of the Nasdaq SmallCap Market or Nasdaq National Market issuer.]

An issuer must apply for initial inclusion following a transaction whereby the issuer combines with a non-Nasdaq entity, resulting in a change of control of the issuer and potentially allowing the non-Nasdaq entity to obtain a Nasdaq Listing (for purposes of this rule, such a transaction is referred to as a "Reverse Merger"). In determining whether a Reverse Merger has occurred, Nasdaq will consider all relevant factors including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the issuer. Nasdaq will also consider the nature of the businesses and the relative size of the Nasdaq issuer and non-Nasdaq entity.

This provision, which applies regardless of whether the issuer obtains shareholder approval for the transaction, requires issuers to qualify under the initial inclusion standards following a Reverse M[m]erger [or consolidation that results in a change of control if there is also a change in either the business or the financial structure of the issuer].⁴ It is important for issuers to realize that in certain instances, the conversion of a Future Priced Security may implicate this provision. For example, if there is no limit on the number of common shares issuable upon conversion, or if the limit is set high enough, the exercise of conversion rights under a Future Priced Security could result in a [change of control in

a deemed] Reverse M[m]erger [or consolidation] with the holders of the Future Priced Securities. [In addition, the issuance of the Future Priced Security and the large increase in the number of common shares outstanding after conversion of the Future Priced Security may be viewed as a change in financial structure.] In such event, an issuer may be required to re-apply for initial inclusion and satisfy all initial inclusion requirements.

* * * * *

Rule 4330. Suspension or Termination of Inclusion of a Security and Exceptions to Inclusion Criteria

(a)-(e) No change.

(f) [Securities issued in connection with the merger, consolidation, or other type of acquisition of at least one issuer of qualifying securities shall be promptly included in Nasdaq, provided that the conditions of Rule 4310(c) or rule 4320(e) for securities that have already been included are satisfied. Nasdaq shall require a Nasdaq SmallCap Market issuer to comply with all applicable requirements for initial inclusion under this Rule 4300 Series and shall require a Nasdaq National Market issuer to comply with all applicable requirements for initial inclusion under the Rule 4300 Series and Rule 4400 Series in the event that such issuer enters into a merger, consolidation, or other type of acquisition with a non-Nasdaq entity (including domestic and foreign corporations and limited partnerships), which results in a change of control and either a change in business or change in the financial structure of the Nasdaq SmallCap Market or Nasdaq National Market issuer.]

An issuer must apply for initial inclusion following a transaction whereby the issuer combines with a non-Nasdaq entity, resulting in a change of control of the issuer and potentially allowing the non-Nasdaq entity to obtain a Nasdaq Listing (for purposes of this rule, such a transaction is referred to as a "Reverse Merger"). In determining whether a Reverse Merger has occurred, Nasdaq will consider all relevant factors including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the issuer. Nasdaq will also consider the nature of the businesses and the relative size of the Nasdaq issuer and non-Nasdaq entity.

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¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Future Priced Securities are private financing instruments which were created as an alternative means of quickly raising capital for issuers. A Future Priced Security is generally structured in the form of a convertible security and is often issued via a private placement. See IM-4300.

⁴ This provision is designed to address situations where a company attempts to obtain a "backdoor listing" on Nasdaq by merging with a Nasdaq issuer with minimal assets and/or operations.