

receives money or other benefit" in connection with the assignment. Todd states that it may not rely on rule 15a-4 because of the benefits arising to Stifel, Todd's parent, in connection with the Transaction.

3. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

4. Todd states that the requested relief satisfies this standard. Todd asserts that the structure and timing of the Transaction were determined by Fort Washington and Stifel in response to a number of factors beyond the scope of the Act and substantially unrelated to the Fund and that the parties wish to consummate the Transaction as expeditiously as possible to permit Fort Washington and Todd to take advantage of new business opportunities and to implement other business plans unrelated to the Fund.

5. Todd represents that under the New Agreement, during the Interim Period, the scope and quality of services provided to the Fund will be at least equivalent to the scope and quality of the services it previously provided. Todd states that if any material change in its personnel occurs during the Interim Period, Todd will apprise and consult with the Board to ensure that the Board, including a majority of the Independent Directors, are satisfied that the scope and quality of the sub-advisory services provided to the Fund will not be diminished. Todd also states that the compensation payable to it under the New Agreement will be no greater than the compensation that would have been paid to Todd under the Existing Agreement.

#### **Applicant's Conditions**

Todd agrees as conditions to the issuance of the exemptive order requested by the application that:

1. The New Agreement that is in effect during the Interim Period will have the same terms and conditions as the Existing Agreement with the exception of its effective and termination dates.

2. Fees payable to Todd by the Fund during the Interim Period will be maintained in an interest bearing escrow account with an unaffiliated financial institution. The amount in the escrow account, including any interest earned, will be paid to (i) Todd only if the shareholders of the Fund approve the New Agreement by the end of the Interim Period; or (ii) the Fund if the

shareholders of the Fund do not approve the New Agreement by the end of the Interim Period. Before any such payment is made, the Fund's Board will be notified.

3. The Fund will convene a meeting of the shareholders to vote on approval of the New Agreement on or before the 150th day following the termination of the Existing Agreement (but in no event later than September 9, 1999).

4. Todd, Stifel, Fort Washington and Western Southern will bear the costs of preparing and filing this application and the costs relating to the solicitation of shareholder approval of the Fund's shareholders necessitated by the Transaction.

5. Todd will take all appropriate actions to ensure that the scope and quality of the sub-advisory services provided to the Fund during the Interim Period will be at least equivalent, in the judgment of the Board, including a majority of the Independent Directors, to the scope and quality of service previously provided. If any material change in Todd's personnel occurs during the Interim Period, Todd will apprise and consult with the Board to ensure that the Board, including a majority of the Independent Directors, are satisfied that the scope and quality of the sub-advisory services provided to the Fund will not be diminished.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99-7439 Filed 3-25-99; 8:45 am]

BILLING CODE 8010-01-M

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-41195; File No. SR-NASD-98-26]

### **Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Amendment No. 6 to a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Institute, on a Pilot Basis, New Primary Nasdaq Market Maker Standards for Nasdaq National Market Securities**

March 19, 1999.

#### **I. Introduction**

On March 19, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("SEC" or

"Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to: (a) implement, on a pilot basis, new Primary Nasdaq Market Maker ("PMM") standards for all Nasdaq National Market ("NMM") securities; (b) extend the NASD's Short Sale Rule pilot until November 1, 1998; and (c) extend the suspension of existing PMM standards until May 1, 1998. On March 30, 1998, the Commission issued notice of the filing and approved, on an accelerated basis, the portions of the filing extending the NASD's Short Sale Rule pilot and the suspension of existing PMM standards.<sup>3</sup> The Short Sale Rule pilot and the suspension of existing PMM standards was subsequently extended until March 31, 1999.<sup>4</sup>

On March 19, 1999, Nasdaq proposed to (1) continue to suspend the current PMM standards until June 30, 1999, and (2) extend the NASD's Short Sale Rule pilot (including extending the amendment to the definition of "legal" short sale) until June 30, 1999.<sup>5</sup>

#### **Background**

Presently, NASD Rule 4612 provides that a member registered as a NASD market maker pursuant to NASD Rule 4611 may be deemed a PMM if that member meets certain threshold standards. The implementation of the SEC Order Handling Rules and what some perceive as a concurrent move toward a more order-driven, rather than a quote-driven, market raised questions about the continue relevance of those PMM standards. As a result, such standards were suspended beginning in early 1997.<sup>6</sup> Currently, all market makers are designated as PMMs.

<sup>1</sup> 14 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Exchange Act Release No. 39819 (March 30, 1998) 63 FR 16841 (April 6, 1998).

<sup>4</sup> See Exchange Act Release No. 40485 (September 25, 1998) 63 FR 52780 (October 1, 1998).

<sup>5</sup> See letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division of Market Regulation, SEC, dated March 19, 1999.

<sup>6</sup> See Exchange Act Release No. 38294 (February 14, 1997) 62 FR 8289 (February 24, 1997) (approving temporary suspension of PMM standards); Exchange Act Release No. 39198 (October 3, 1997) 62 FR 53365 (October 14, 1997) (extending suspension through April 1, 1998); Exchange Act Release No. 39819 (March 30, 1998) 63 FR 16841 (April 6, 1998) (extending suspension through May 1, 1998); Exchange Act Release No. 39936 (April 30, 1998) 63 FR 25253 (May 7, 1998) (extending suspension through July 1, 1998); Exchange Act Release No. 40140 (June 26, 1998) 63 FR 36464 (July 6, 1998) (extending suspension through October 1, 1998); Exchange Act Release No. 40485 (September 23, 1998) 63 FR 52780 (October 1, 1998) (extending suspension through March 31, 1999).

Since February 1997, Nasdaq has worked to develop PMM standards that are more meaningful in what may be an increasingly order-driven environment and that better identify firms engaged in responsible market making activities deserving of the benefits associated with being a PMM, such as being exempt from NASD Rule 3350, the Commission's Short Sale Rule. The NASD now proposes to extend the current suspension of the existing PMM standards.

In light of a substantial number of comments on the proposed new PMM standards, Nasdaq staff in August 1998 convened a subcommittee to develop new standards. Nasdaq expects that it will file an amendment to SR-NASD-98-26 to incorporate the new PMM standards that currently are being developed by the subcommittee, or in the alternative, that it will withdraw SR-NASD-98-26 and will submit the new PMM standards as a new filing.

For the reasons discussed below, the Commission has determined to grant accelerated approval of Nasdaq's request, in Amendment No. 6, to continue to suspend the current PMM standards and to extend the NASD's Short Sale Rule Pilot until June 30, 1999.

## II. Proposed Rule Change

In the current amendment, Nasdaq is proposing to extend the Short Sale Rule pilot (including extending the amendment to the definition of "legal" short sale) and the suspension of existing PMM standards to allow more time to refine the PMM standards.

The proposed rule language, as amended, follows. Additions are italicized; deletions are bracketed.

### NASD Rule 3350

(a)-(k) No Changes

(l) This Rule shall be in effect until [March 31, 1999] *June 30, 1999*.

## III. Discussion

After careful consideration, the Commission has concluded, for the reasons set forth below, that the extension of the Short Sale Rule pilot and the suspension of the existing PMM standards until June 30, 1999, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder. In particular, the extension is consistent with Section 15A(b)(6) <sup>7</sup> of the Exchange Act. Section 15A(b)(6) requires that the NASD's rules be designed, among other things, to remove impediments to and perfect the mechanism of a free and open market

and a national market system and to promote just and equitable principles of trade. The Commission believes that continuation of the Short Sale Rule pilot and the continued suspension of the current PMM standards will maintain the status quo while the Commission and the NASD review the operation of revised PMM standards. Because the Commission's ultimate stance on the Short Sale Rule may be affected, in part, by the operation of revised PMM standards, it is reasonable to keep the Short Sale Rule pilot in place while work continues on the PMM standards. Furthermore, it is judicious, in the short term, to avoid reintroducing the previous PMM standards prior to the implementation of a new PMM pilot.

In finding that the suspension of the existing PMM standards is consistent with the Exchange Act, the Commission reserves judgment on the merits of the NASD's Short Sale Rule, any market maker exemptions to that rule, and the proposed new PMM standards. The Commission recognizes that the Short Sale Rule already has generated significant public comment. Such commentary, along with any further comment on the interaction of the Short Sale Rule with the proposed new PMM standards, will help guide the Commission's evaluation of the Short Sale Rule and new PMM standards. During the PMM pilot period, the Commission anticipates that the NASD will continue to address the Commission's questions and concerns and provide the Commission staff with any relevant information about the practical effects and the operation of the revised PMM standards and possible interaction between those standards and the NASD's Short Sale Rule.

The Commission finds good cause for approving the extension of the Short Sale Rule pilot (including extending the amendment to the definition of "legal" short sale) and the suspension of existing PMM standards prior to the 30th day after the date of publication of notice of the filing in the **Federal Register**. It could be disruptive to the Nasdaq market and confusing to market participants to reintroduce the previous PMM standards for a brief period prior to implementing a new PMM pilot.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 6, including whether the proposed Amendment is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth

Street, N.W., 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-98-26 and should be submitted April 16, 1999.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,<sup>8</sup> that Amendment No. 6 to the proposed rule change, SR-NASD-98-26, which extends the NASD Short Sale Rule pilot and the suspension of the current PMM standards to June 30, 1999, be and hereby is approved on an accelerated basis.<sup>9</sup>

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

### Data Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

**DATES:** Comments should be submitted on or before May 26, 1999.

**FOR FURTHER INFORMATION CONTACT:** Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S. W., Suite 5000, Washington, D. C. 20416. Phone Number: 202-205-6629.

### SUPPLEMENTARY INFORMATION:

<sup>8</sup> 15 U.S.C. 78s(b)(2)

<sup>9</sup> In approving Amendment No. 6, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).