

Activities) (Public Meeting)
11:30 a.m. Affirmation Session
(Public Meeting) (If needed)

Week of July 19—Tentative

There are no meetings scheduled for the Week of July 19.

Note: The schedule for Commission Meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415-1292. Contact person for more information: Bill Hill (301) 415-1661.

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/SECY/smj/schedule.htm>

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301-415-1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: June 24, 1999.

William M. Hill, Jr.,
SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99-16596 Filed 6-25-99; 10:44 am]

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IA-1805; File No. 803-134]

CSX Financial Management, Inc.; Notice of Application

June 23, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Advisers Act of 1940 ("Advisers Act").

Applicant: CSX Financial Management, Inc.

Relevant Advisers Act Sections: Exemption requested under section 202(a)(11)(F) from section 202(a)(11).

Summary of Application: Applicant requests an order declaring it to be a person not within the intent of section 202(a)(11), which defines the term "investment adviser."

Filing Dates: The application was filed on January 25, 1999 and amended on June 1, 1999.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing.

Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 19, 1999, and should be accompanied by proof of service or applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW, Washington, DC 20549-0609. Applicant, CSX Financial Management, Inc., One James Center, 16th Floor, 901 East Cary Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Karen L. Goldstein, Staff Attorney, at (202) 942-0646, Jennifer L. Sawin, Special Counsel, at (202) 942-0532 (Division of Investment Management, Task Force on Investment Adviser Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant was organized as a Delaware corporation in 1989. Sea-Land Service, Inc. ("Sea-Land"), a wholly-owned subsidiary of CSX Corporation ("CSX"), owns all of the outstanding stock of Applicant.

2. Applicant serves as an investment adviser for CSX and certain CSX subsidiaries, now existing or to be formed in the future, of which CSX owns, directly or indirectly, more than 50% of the outstanding voting shares (such existing and future subsidiaries, together with CSX, the "CSX Companies"). From time to time there are more than 15 companies included within the CSX Companies.

3. Since 1993, Applicant has been registered with the SEC as an investment adviser. Applicant has never provided advisory services to any other person or entity other than the CSX Companies.

Applicant's Legal Analysis

1. Section 202(a) (11) of the Advisers Act defines the term "investment adviser" to mean "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing,

or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. . . ." Section 202(a) (11) (F) of the Advisers Act authorizes the SEC to exclude from the definition of "investment adviser" persons that are not within the intent of section 202(a)(11).

2. Section 203(a) of the Advisers Act requires investment advisers to register with the SEC. Section 203(b) of the Advisers Act provides exemptions from this registration requirement. Applicant asserts that it does not appear to qualify for any of the exemptions provided by section 203(b).

3. Applicant requests that the SEC declare it to be a person not within the intent of section 202(a) (11). Applicant submits that its advisory services to the CSX Companies should not be considered services to "others". Although Applicant is a corporation, and therefore a separate legal entity from the CSX Companies, Applicant describes its relationship to the CSX Companies as internal. Applicant's financial results are reported in CSX's financial statements, which reflect results for all the CSX Companies on a consolidated basis. Applicant states that CSX owns more than 50% of the outstanding voting shares of Applicant and of each CSX Company.

4. Applicant submits that the protections of the Advisers Act may be considered unnecessary when an adviser and client, although separate legal entities, in reality, form a single economic entity. Applicant states that it exists solely to provide investment advisory services to the CSX Companies. Applicant represents that it has never provided, and does not intend to provide in the future, any investment advisory services to the general public or to any persons or entities other than the CSX Companies. Applicant states the CSX, the indirect parent of Applicant, views its investment in Applicant as a method of obtaining advisory services for the CSX Companies and not as a portfolio asset. Applicant asserts that there is no public interest in requiring it to be registered under the Advisers Act.

5. Applicant states that it does not hold itself out to the public as an investment adviser. Applicant states that it is not listed in the phone book under "investment advisory services." Applicant represents that it does not engage in any advertising, attend investment management conferences as a vendor, or conduct any marketing activities.

Applicant's Condition

Applicant agrees that the requested order shall be subject to the condition that Applicant continues to provide investment advisory services only with respect to the assets of the CSX Companies and does not solicit public clients.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-16497 Filed 6-28-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41543; File No. SR-NASD-99-20]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating To Firm Quotation Requirements

June 22, 1999.

I. Introduction and Background

On April 20, 1999, 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 ("Commission" or "SEC") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder.² The proposed rule change would require a market maker to disseminate an inferior quote whenever the market maker fails to execute the full size of an incoming order that is at least one normal unit of trading greater than the market maker's published quotation size. The proposal also would prohibit the use of automatic quote updating in such circumstances.

Notice of the proposed rule change was published for comment in the **Federal Register** on May 18, 1999.³ The Commission received four comment letters regarding the proposal.⁴ This

order approves the proposed rule change.

II. Description of the Proposal

Nasdaq proposes to amend NASD Rule 4613(b), "Firm Quotations," and IM-4613, "Autoquote Policy," to require a market maker to disseminate an inferior quote whenever the market maker fails to execute the full size of an incoming order that is at least one normal unit of trading greater than the market maker's published quotation size. The proposal also will prohibit the use of automatic quote updating in such circumstances.

According to Nasdaq, the proposal is designed to correct the inefficiencies that arise when a market participant must use multiple small orders to accomplish the objectives of a single large order. In this regard, Nasdaq notes that a market participant may be required to enter multiple small orders when a market maker enters a minimum quotation size, receives an order larger than its quoted size, fills the order only up to its quoted size (as currently required under NASD Rule 4613(b)), and remains at the inside quote prepared to accept another order at the minimum quotation size. The following example illustrates this scenario:

Market Maker #1 ("MM1") is bidding \$10 for 100 shares of ABCD. Order Entry Firm # ("OE1") sends a preferred SelectNet order to MM1 to sell 1000 shares of ABCD at \$10, MM1 partially executes OE1's 1000-share order by buying 100 shares of ABCD, and does not move its quotation. Assuming MM1 is alone at the inside (i.e. at the best bid), OE1 may be compelled to send multiple SelectNet messages to MM1, potentially resulting in a total of ten transactions to complete its 1000-share order.

Nasdaq maintains that although MM1 has complied with NASD Rule 3320, "Offers at Stated Prices," IM-3320, "Firmness of Quotations," current NASD Rule 4613(b), and Exchange Act Rule 11Ac1-1⁵ executing a presented order up to its published quotation price and size, it is apparent that MM1 was willing to buy more than the 100 shares displayed. Nasdaq believes that MM1's actions result in increased transaction costs, impede the price discovery process, and preclude other market

makers from positively executing large orders.

In addition, Nasdaq believes that MM1's actions may hinder price continuity and lead to increased instances of locked and crossed markets. For example, if MM1 is bidding 100 shares at \$20, and MM2 wishes to lower its offer from \$20^{1/16} to \$20, MM2 would send MM1 a SelectNet message for 100 shares (or more) in an attempt to exhaust MM1's quote. After sending multiple SelectNet messages to take out MM1, MM2 may move its quote to \$20, thereby locking the market.⁶

Nasdaq states that the proposal is designed to effectuate the display of a market maker's true and intended quotation size. Nasdaq believes that when a market maker receives an order larger than the market maker's displayed size and completes the order only at its displayed size, the market maker has indicated clearly that its interest in trading at that price level has been depleted. Accordingly, the proposal will require a market maker that has partially filled an incoming order that is greater than the market maker's displayed size to adjust its quote to an inferior price level.

Nasdaq proposes to modify IM-4613(b) to mandate compliance with proposed NASD Rule 4613(b)(2). IM-4613(a) generally prohibits the use of "autoquote" mechanisms to generate automatically a new quote that would keep a market maker's quote away from the best market. IM-4613(b)(1) provides an exception to this rule that permits the use of autoquote functions when the update is in response to an execution in the security by that firm. Nasdaq proposes to revise IM-4613(b)(1) to require that the market maker comply with proposed NASD Rule 4613(b)(2) by allowing the market maker to update automatically its quote only after fully executed the incoming order. If the order is not executed in full, the autoquote functionality must be discontinued and the market maker must revise its quote to an inferior price level.

III. Summary of Comments

The Commission received four comment letters regarding the proposal.⁷ All four commenters generally supported the proposed rule change. One commenter argued, for example, that the proposal will increase

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 41390 (May 12, 1999) 64 FR 27016.

⁴ See Letter from Richard Y. Roberts, Esquire, Thelen Reid & Priest LLP, on behalf of the Electronic Traders Association ("ETA") to Jonathan Katz, Secretary, SEC, dated June 8, 1999 ("ETA Letter"); Letter from Gerald S. Putnam, Chief Executive Officer, Archipelago, LLC to Jonathan G. Katz, Secretary, SEC dated June 8, 1999 ("Archipelago Letter"); Letter from Mike Cormack, Manager, Equity Trading, American Century Investment Management ("ACIM") to Jonathan Katz

Secretary, SEC, dated June 3, 1999 ("ACIM Letter"); Letter from Matthew W. Johnson, Managing Director, Lehman Brothers, to Jonathan G. Katz, Secretary, SEC, dated June 9, 1999 ("Lehman Letter").

⁵ 17 CFR 240.11Ac1-1 (requiring a broker-dealer to execute orders at prices at least as favorable as its published quotation in an amount up to its published quotation size).

⁶ The Commission notes that market makers are required to use reasonable means to avoid locking and crossing the market. See Securities Exchange Act Release No. 40455 (September 22, 1998), 63 FR 51987 (September 29, 1998) (order approving File No. SR-NASD-98-01).

⁷ See *Supra* Note 4.