202/408–6839, E-mail: ''infopcsd@aol.com''.

Contact: Paul Flaim, Administrative Assistant, at 202/408–5296.

Sign Language Interpreter: Please call the contact if you will need a sign language interpreter.

Martin A. Spitzer,

Executive Director, President's Council on Sustainable Development.

[FR Doc. 97–29288 Filed 11–4–97; 8:45 am]

BILLING CODE 3125–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Orlando Super Card, Inc.; Order of Suspension of Trading

November 3, 1997.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Orlando Super Card, Inc. (''Orlando Super Card'') because of questions regarding (1) the trading and true value of the common stock of Orlando Super Card; and (2) the accuracy and adequacy of publicly disseminated information concerning Orlando Super Card's financial prospects.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EST, November 3, 1997 through 11:59 p.m. EST, on November 14, 1997.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–29353 Filed 11–3–97; 11:15 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39284; File No. SR–NASD–97–38]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change, and Amendment No. 1 thereto, Relating to the Application of the NASD Corporate Financing Requirements To Exchange Offers, Mergers and Acquisitions, and Other Similar Transactions

October 29, 1997.

On May 23, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to clarify the application of Rules 2710 and 2720 to exchange offers, merger and acquisition transactions, and other similar corporate reorganizations. On June 19, 1997, the NASD submitted Amendment No. 1 to the proposed rule change.[3]

The proposed rule change and Amendment No. 1 were published for comment in Securities Exchange Act Release No. 38822 (July 8, 1997), 62 FR 38150 (July 16, 1997). No comments were received on the proposal. This order approves the proposed rule change as amended.

I. Introduction

Rule 2710 of the Conduct Rules of the NASD (''Corporate Financing Rule'') requires that members file with the Corporate Financing Department of the NASD public offerings of securities for review of the proposed underwriting terms and arrangements, which terms and arrangements must comply with that rule. Rule 2720 of the Conduct Rules (''Conflicts Rule'') establishes standards in addition to those in Rule 2710 to address the conflicts-of-interest that occur in connection with a public offering of the securities of a member, the parent of a member, an affiliate of a member, or other issuer with whom the member has a conflict-of-interest. For an offering to be subject to filing under the Corporate Financing and Conflicts Rules, a member must be considered to be ''participating'' in the offering and the offering must be one that is subject to the filing requirements. Paragraph (a)(5) of Rule 2710 defines ''participation or participating in a public offering'' to include participation in the preparation of the offering or other documents, participation in the distribution of the offering on an underwritten, non-underwritten, or any other basis, furnishing of customer and/or broker lists for solicitation, or participation in any advisory or consulting capacity to the issuer related to the offering, but not the preparation of an appraisal in a savings and loan conversion or a bank offering or the preparation of a fairness opinion pursuant to Rule 13e–3 under the Act.[4]

With respect to offerings subject to compliance with the Rules, the Corporate Financing and Conflict Rules apply to most ''public offerings'' of securities, which is defined in Rule 2720(b)(14) to include, among other things, ''offerings made pursuant to a merger or acquisition.'' Neither the Corporate Financing Rule nor the Conflicts Rule currently identifies the types of mergers and acquisitions subject to filing and compliance with those rules. The NASD has, therefore, determined to amend Rules 2710 and 2720 to clarify the application of the requirements of the Corporate Financing and Conflicts Rules to exchange offers, mergers and acquisitions, and similar corporate reorganizations and make other related amendments. In view of the increasing amount of merger and acquisition activity, the NASD believes that the proposed amendments to Rule 2710 and 2720 will provide certainty and eliminate confusion regarding their application to such transactions.

With respect to the time-sensitive nature of many mergers and acquisitions, exchange offers, and similar corporate reorganizations that would become subject to filing as a result of approval of the proposed rule change, the NASD previously announced a policy to expedite the review of such offerings by the Corporate Financing Department.[5] In general, it is anticipated that a comment letter will be issued by the Corporate Financing Department of the NASD within 48 hours of receipt of the filing

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

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the NASD amended Rule 2710(b)(7)(F)(i) to replace the phrase ''listed on the Nasdaq National Market, the New York Stock Exchange, or American Stock Exchange'' with ''designated as a Nasdaq National Market security or listed on the New York Stock Exchange or American Stock Exchange.'' Letter from Suzanne E. Rothwell, Chief Counsel, Corporate Financing, NASD Regulation, to Kathy England, Assistant Director, Division of Market Regulation, SEC (June 18, 1997).

[4] 17 CFR 240.13e–3.

[5] See Notice to Members 95–73 (September 1995) (''NTM 95–73''). A copy of NTM 95–73 was submitted as Exhibit 2 to the NASD's proposal and is available for inspection and copying in the Commission's Public Reference Room.

of the documents related to such a transaction, so long as the documentation and related information submitted meet the requirements set forth in subparagraphs (b) (5) and (6) of Rule 2710 and the appropriate filing fee is included.

II. Description of the Proposal

The NASD is proposing to amend the Corporate Financing and Conflicts Rules to clarify their application to exchange offers, merger and acquisition transactions, and other similar corporate reorganizations and make other related changes. The amendments limit the application of the rules to narrow situations where pre-offering review under the Corporate Financing Rule or the application of the Conflicts Rule is believed necessary to protect investors. Thus, in general, an exchange offer will be subject to the Conflicts Rule and required to be filed with the Corporate Financing Department for review when a member is participating in solicitation activities related to an offer involving securities that are exempt from SEC registration. In addition, exchange offers, merger and acquisition transactions, and other similar corporate reorganizations will be subject to the Conflicts Rule, and required to be filed for review, if there is an issuance of securities that results in the direct or indirect public ownership of a member.

Description of Proposed Rule Change to Rule 2710

The filing requirements of the Corporate Financing Rule subject an offering to compliance with that rule and, if the offering consists of securities issued by a member, the parent of a member, an affiliate of a member, or an issuer with which the member has a conflict-of-interest (as that latter term is defined in Rule 2720), to compliance with the Conflicts rule. Paragraph (b)(9) of Rule 2710 is intended to provide clarification of certain types of public offerings required to be filed with the Corporate Financing Department of the NASD for review. Paragraph (b)(9) is proposed to be amended to add new subparagraph (H) that would require the filing of exchange offers exempt from registration under Sections 3(a)(4), 3(a)(9), and 3(a)(11) of the Securities Act of 1933 (''Securities Act''),[6] where the member engages in active solicitation, and exchange offers registered with the Commission if a member acts as a dealer manager.[7] Active solicitation occurs when a member directly solicits or contacts securityholders, acts as a dealer manager, performs tasks that are performed by investor relations firms (*i.e.*, contacts securityholders to determine the action they intend to take), contacts securityholders to determine whether they have received the offering materials, answers unsolicited contacts, and participates in meetings with securityholders or their advisors before or after an exchange offer begins.[8] In contrast, active solicitation does not encompass the delivery of a ''fairness opinion,'' advice as to the structure and terms of the exchange offer, assistance in the preparation of the offering documents to be sent to securityholders, nor any other functions that do not involve direct solicitation or direct contact with securityholders.

The NASD is not extending the filing requirement to other public exchange offers exempt from registration because such offerings are either subject to the oversight of a court or of another review authority, such as the Comptroller of the Currency or the Federal Deposit Insurance Corporation.[9]

With respect to exchange offers registered on Forms S–4 or F–4, filing is expressly limited to those distributions where the member is engaged by the company to act as dealer manager and solicits consents on behalf of the company to the proposed reorganization and to otherwise facilitate the exchange of securities. In such exchange offers, the member generally acts as a financial advisor to help structure the transaction and will receive a fee, as well as distribution-related compensation for services rendered.

To the extent an exchange offer exempt under Sections 3(a) (4), (9), and (11) of the Securities Act or registered with the SEC does not fall within the filing requirement in new subparagraph (b)(9)(H) to Rule 2710 because the member is not engaging in solicitation activities or is not acting as dealer manager, respectively, the exchange offer is considered exempt from compliance with the Corporate Financing and Conflicts Rules because the member is not considered to be ''participating in the offering.''

The NASD, however, is also proposing to add subparagraph (b)(7)(F) to Rule 2710 to exempt from filing exchange offers where the securities to be issued or the securities of the company to be acquired are designated as a Nasdaq National Market security or listed on the New York Stock Exchange (''NYSE'') or American Stock Exchange (''Amex'') or where the company issuing securities qualifies to register securities on SEC Registration Form S–3, F–3 or F–10.

The exemption for companies qualified to register securities on SEC Registration Form S–3, F–3, or F–10 applies to those companies that meet the standards for the Forms in subparagraphs (C) (i) and (ii) of paragraph (b)(7) of Rule 2710 in order to restrict the exemption to domestic companies that meet the standards for Forms S–3 and F–3 prior to October 21, 1992 and to Canadian-incorporated foreign private issuers that meet the standards for Form F–10 approved in Release No. 34–29354.[10] This provision would require, in general, that a domestic company have a three-year history as a public reporting company, and be in compliance with the current year's periodic reporting requirements of the Act (with respect to the timely filing of Forms 10–Qs and 10–Ks). In addition, the minimum required market value of a company's common stock must be as follows: Form S–3, $150 million (or $100 million market value of voting stock and three million shares annual trading volume); and Form F–3, $300 million held world-wide. For Form F–10, Canadian private issuers must have (CN) $360 aggregate value of voting stock and a public float of (CN) $754 million.

Paragraph (b)(7) of the Corporate Financing Rule, which includes the two filing exemptions for exchange offers discussed above, lists those public offerings not required to be filed for review with the Corporate Financing Department. However, the underwriting terms and arrangements of such exempt offerings must be in compliance with the requirements of Rule 2710 or 2810,

[6] 15 U.S.C. 77c(a)(4), 77c(a)(9), and 77c(a)(11).

[7] In this context, the term ''exchange offer'' is intended to refer to transactions where one security is issued in exchange for another security of the issuer or another entity, and is distinguished from mergers, acquisitions and other corporate reorganizations (except if accomplished through an exchange offer) registered on a Form S–4 or F–4.

[8] The concept of ''solicitation'' in rules 2710 and 2720 is different than in Section 3(a)(9) of the Securities Act. For example, activities by a broker/dealer that would not be ''soliciting'' for purposes of Section 3(a)(9) may nonetheless come within the concept of ''solicitation'' for purposes of the requirement to file an offering with NASD Regulation for review under Rules 2710 and 2720. See applicable SEC no-action letters on Section 3(a)(9). Further, the application of the filing requirements of Rule 2710 does not depend upon whether remuneration is paid to the member. Thus, regardless of whether a member is paid for soliciting the exchange, an exchange offer would be subject to filing if the member engages in solicitation activities as described in this rule filing.

[9] See 15 U.S.C. 3(a)(5), 3(a)(6), 3(a)(10), and 3(a)(12).

[10] See Securities Exchange Act Rel. No. 29354 (June 21, 1991), 56 FR 30036 (July 1, 1991); and Notice to Members 93–88 (December 1993), which includes a copy of Forms S–3 and F–3 as those Forms existed prior to October 21, 1992 and Form F–10 as approved by the SEC on June 21, 1991.

as applicable. Moreover, any offering exempt from filing under paragraph (b)(7) must nonetheless be filed if the offering is subject to Rule 2720, the Conflicts Rule, and is subject to review by the Corporate Financing Department for compliance with Rules 2710 and 2720.[11]

Paragraph (b)(9) of the Corporate Financing Rule is also proposed to be amended to add subparagraph (I) to require the filing of any exchange offer, merger or acquisition transaction, and similar corporate reorganization that involves an issuance of securities that results in the direct or indirect public ownership of a member.[12] Such offerings would be subject to compliance with Rule 2710 and Rule 2720.[13] The NASD has long held the view that pre-offering review is vital to protect investors when the member and the issuer are in a control relationship that is addressed through the application of Rule 2720. The NASD has previously clarified that mergers or acquisitions involving an issuer and a member or its parent that result in the direct or indirect public ownership of a member are subject to compliance with Rule 2720, regardless of whether the merger or acquisition occurs subsequent to the issuer's initial public offering.[14]

Paragraph (b)(8) of Rule 2710 lists those offerings that, although within the definition of ''public offering,'' are exempted from compliance with Rule 2710 and 2720. The NASD is proposing to add subparagraphs (I) and (J) to paragraph (b)(8) to provide an exemption from filing and compliance with Rules 2710 and 2720 for:

1. Spin-off and reverse spin-off transactions involving a subsidiary or affiliate of the issuer, where the securities are issued as a dividend or distribution to current shareholders; and

2. Securities registered with the SEC in connection with a merger, acquisition, or other similar business combination, except if the offering would be filed under subparagraph (b)(9)(I), described above, because it involves a transaction that results in the direct or indirect public ownership of a member.

In addition, the NASD is proposing to add subparagraph (c)(6)(B)(v) to Rule 2710 to provide that it is an unreasonable term and arrangement for a member to receive a right to receive a ''tail fee' arrangement that has a duration of more than two years from the date the member's services are terminated, in the event an offering is not completed and the issuer subsequently consummates a similar transaction. Such arrangements are currently only provided in connection with exchange offers. It is believed that the real benefit derived by a company that grants a ''tail fee' arrangement is the creativity of the strategic advice given by the member for the particular transaction that may include, among other things, assisting the company in defining objectives, performing valuation analyses, formulating restructuring alternatives, and structuring the offering. In particular, in the case of an exchange offer, a member providing financial advance will generally have provided considerable ongoing financial advisory services to the company.

The proposed ''tail fee'' prohibition also, however, would permit a member to demonstrate on the basis of information satisfactory to the NASD that an arrangement of more than two years is not unfair or unreasonable under the circumstances. The ability of the staff of the Corporate Financing Department to grant exceptions upon request is intended to be used where the member can demonstrate that the creativity of the strategic advice provided by the member has a potential benefit to the company for more than two years. In the case of exchange offers exempt from filing but subject to compliance with the Rule under subparagraph (b)(7)(F), where the ''tail fee'' arrangement is proposed to have a duration of longer than two years, a member would be required to request an opinion of the staff as to whether the arrangement is permissible under the Rule. In the case of any other offering exempt from filing under subparagraph (b)(7), a member is required to request an opinion of the staff as to whether it has ''no objections'' as to any proposed ''tail fee'' arrangement.

As set forth above, although ''tail fee'' arrangements are currently granted only in connection with exchange offers, the provision is written to regulate such an arrangement in connection with any type of public offering subject to compliance with the Corporate Financing Rule. Where a ''tail fee'' arrangement is proposed in connection with public offerings that are not exchange offers, the NASD staff will consider whether the arrangement is justified by the services provided by the member to the issuer. Where the member does not appear to have provided the type of substantial structuring and/or advisory services to the issuer similar to those that are described above, other than those services traditionally provided in connection with a distribution of a public offering, a proposed ''tail fee'' arrangement will be considered to be unfair and unreasonable on the basis that the arrangement would violate Rule 2110 (the Association's basic ethical rule) and Rule 2430 since the member is proposing to be paid for services that the member has not provided to the issuer. This position is consistent with subparagraph (c)(6)(B)(iv) of Rule 2710, which prohibits a member from receiving compensation in connection with an offering of securities that is not completed, except for compensation received in connection with a transaction (*i.e.*, a merger transaction) that occurs in lieu of the proposed offering as a result of the member's efforts and the reimbursement of the member's reasonable out-of-pocket accountable expenses.

Description of Proposed Rule Change to Rule 2720

The NASD is proposing to amend the Conflicts Rule to conform the scope section of the Rule to the amendments to the filing requirements of Rule 2710 and to clarify the responsibilities of a qualified independent underwriter in an exchange offer subject to compliance with rule 2720. Paragraph (a) of Rule 2720 is proposed to be amended to add subparagraph (3) to provide that in the case of an exchange offer, merger and acquisition transaction, or similar corporate reorganization, compliance with Rule 2720 is required only if the offering comes within subparagraph (b)(9)(h) of Rule 2710, where the issuance of securities is by a member or the parent of a member or if the offering comes within subparagraph (b)(9)(I). As set forth above, proposed subparagraph (b)(9)(H) would require the filing of exchange offers exempt under Section 3(a)(4), 3(a)(9), and 3(a)(11) of the Securities Act, if the member's participation involves active solicitation activities, and of exchange offers registered with the SEC, if the member is acting as dealer manager. Thus, the exemption from filing for such exchange offers provided by proposed

[11] See *infra* note 14.

[12] This latter filing requirement does not, it is important to note, require the filing of exchange offers, mergers, acquisitions, and corporate reorganizations involving an offering of securities of an affiliate of a member other than a parent or of an issuer that otherwise has a conflict-of-interest with a member.

[13] Paragraph (n) of Rule 2720 provides that all offerings of securities included within the scope of that Rule are also subject to the provisions of Rule 2710, even though an exemption from filing may be available under Rule 2720.

[14] See Notice to Members 88–100 (December 1988). In that notice, the Association expressed its special concerns regarding the merger of blank check companies in the penny stock market with privately held holding companies of members, indirectly creating a publicly-held NASD member without having to comply with Rule 2720.

subparagraph (b)(7)(F), where the securities are designated as a Nasdaq National Market security or listed on the NYSE or Amex or the issuer qualifies to register the securities on Form S–3, F–3, or F–10, is not available if the exchange offer is by a member or parent of a member.[15] As further set forth above, proposed subparagraph(b)(9)(I) would require the filing of any exchange offer, merger and acquisition transaction, or similar corporate reorganization involving an issuance of securities that results in the direct or indirect public ownership of a member.[16]

The NASD is also proposing to amend Rule 2720 to clarify the obligations of a qualified independent underwriter[17] that would be required by subparagraph (c)(3) of Rule 2720 to perform due diligence with respect to the offering document and provide a recommendation with respect to the exchange value of an exchange offer, merger and acquisition transaction, or similar corporate reorganization. Currently, the Conflicts Rule requires that the price at which an equity issue or the yield at which a debt issue is to be distributed to the public be established at a price no higher or yield no lower than that recommended by a qualified independent underwriter (who shall also participate in the preparation of the registration statement and shall exercise the usual standards of ''due diligence'' in respect thereto). The NASD is proposing to amend subparagraph (c)(3)(A) of Rule 2720 by adding a new exception to state that in any exchange offer, merger and acquisition transaction or corporate reorganization subject to Rule 2720, the provision which requires that the price or yield of the securities be established based on the recommendation of a qualified independent underwriter shall not apply and instead, the exchange value of the securities being offered in the transaction shall not be less than that recommended by a qualified independent underwriter.

Finally, in order to make clear that the offerings that are exempt under subparagraph (b)(8) of Rule 2710 (that include exemptions for offerings of securities issued in a spin-off or in a merger registered with the SEC on Form S–4 or F–4) are also exempt from Rule 2720, paragraph (o) of Rule 2720 is being amended to reference the exemptions from Rule 2720 that are provided in subparagraph (b)(8) of Rule 2710.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Association, and, in particular, with the requirements of Section 15A(b) of the Act.[18] Among other things, Section 15A(b)(6) of the Act requires that the rules of a national securities association be designed to foster cooperation and coordination with persons engaged in regulation, 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.[19]

Specifically, the Commission believes that the proposed amendments to Rules 2710 and 2720 should reduce confusion regarding the application of the NASD's Corporate Financing and Conflicts Rules to exchange offers, mergers and acquisitions, and other similar corporate reorganizations. The Commission supports efforts by the NASD to streamline the process for participation by members in public offerings by clarifying when pre-offering review is necessary and in the public interest.

A. Amendment to Rule 2710

The Commission believes that it is appropriate to amend Rule 2710 to require filing of exchange offers exempt from registration under Sections 3(a)(4), 3(a)(9), and 3(a)(11) of the Securities Act,[20] where the member engages in active solicitation, and exchange offers registered with the Commission if a member acts as a dealer manager. When a member actively solicits securityholders with respect to exempted exchange offers, or acts as a dealer manager with respect to exchange offers registered on Form S–4 or F–4, pre-offering review is necessary to prevent fraudulent and manipulative acts and practices, and protect investors.

The Commission believes that it is appropriate to amend Rule 2710 to exempt from filing exchange offers where securities to be issued or the securities of the company to be acquired are designated as a Nasdaq National Market security or listed on the NYSE or Amex or where the company issuing securities qualifies to register securities on SEC registration Form S–3, F–3 or F–10. The Commission notes that the listing standards of the three markets require a minimum number of independent directors on the Board of Directors. This requirement should ensure that the independent directors of the acquiror or target will evaluate the offer and that sufficient information will be distributed to shareholders and markets, so that investors can make an informed decision regarding whether to sell or hold securities.

The Commission also believes that it is appropriate to amend Rule 2710 to exempt from filing spin-off and reverse spin-off transactions involving a subsidiary of affiliate of the issuer, where the securities are issued as a dividend or distribution to current shareholders, and securities registered with the SEC in connection with a merger, acquisition, or other similar business combination. The Commission agrees that spin-off transactions to existing securityholders as a dividend or other distribution may not involve an investment decision by shareholders and, consequently, any member acting as a financial advisor to the parent company is not generally involved in any public solicitation in connection with the transaction.[21] Further, merger transactions and similar business combinations registered with the SEC generally only involve a member in providing financial advice to the Board of Directors of the acquiror or target, that may include an obligation that the

[15] *See supra* note 13.

[16] This filing requirement is consistent with the position announced in Notice to Members 88–100 (December 1988) and paragraph (i) of Rule 2720 which states: ''* * * if an issuer proposes to engage in any offering which results in the public ownership of a member * * * the offering shall be subject to the provisions of this Rule to the same extent as if the transaction had occurred prior to the filing of the offering.''

[17] A member must meet a number of requirements in order to be qualified independent underwriter under subparagraph (b)(15) of Rule 2720, including the requirement that the member ''has agreed in acting as a qualified independent underwriter to undertake the legal responsibilities and liabilities of an underwriter under the Securities Act of 1933, specifically including those inherent in Section 11 thereof.'' Participation of a qualified independent underwriter is not required by Rule 2720 if the offering is of equity securities that meet the test of having a ''bona fide independent market'' or is of debt that is rated investment grade.

[18] 15 U.S.C. 78f(b).

[19] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] 15 U.S.C. 77c(a)(4), 77c(a)(9), and 77c(a)(11).

[21] It should be noted, however, that where a spin-off is followed by a traditional public offering by the spun-off company to raise capital, the company's initial public offering would be subject to the Corporate Financing Rule's filing requirements and to compliance with Rule 2720. This analysis would require the filing of any public offering to raise capital that follows a merger, acquisition, exchange offer or other corporate reorganization that would be exempt from filing under Rule 2710 or exempt from compliance with Rules 2710 and 2720. In the latter case, the offering may fall within another exemption from filing, such as the filing exemptions provided by subparagraphs (b)(7) (A), (C) or (D) of Rule 2710.

member issue a fairness opinion regarding the acquisition price.

B. Amendment to Rule 2720

The Commission believes that it is appropriate to amend Rule 2720 to state that in any exchange offer, merger and acquisition transaction or corporate reorganization subject to Rule 2720, the provision which requires that the price or yield of the securities be established based on the recommendation of a qualified independent underwriter shall not apply and, instead, the exchange values of the securities being offered in the transaction shall not be less than that recommended by a qualified independent underwriter. The Commission believes that the proposed new provision would clarify that the obligation of the qualified independent underwriter is to ensure that the recipient of the exchange offer, which is the party intended to be protected by the participation of a qualified independent underwriter, shall not receive fewer of the securities being issued in exchange for each security held by the recipient than is recommended by the qualified independent underwriter.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–NASD–97–38) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–29197 Filed 11–4–97; 8:45 am]

BILLING CODE 8010–01–M

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39285; File No. SR–NASD–97–26]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approved to Amendment No. 3 Relating to an Extension and Expansion of the Pilot for the NASD's Rule Permitting Market Makers To Display Their Actual Quotation Size

October 29, 1997.

I. Background

On April 11, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') 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 (''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] to amend NASD Rule 4613(a)(1)(C) by (a) expanding from 50 to 150 the number of securities in a pilot program for which market makers may quote their actual size by reducing the minimum quotation size requirement for market makers in certain securities listed on the Nasdaq Stock Market (''Nasdaq'') to one normal unit of trading (''Actual Size Rule''), and (b) extending the pilot through December 31, 1997.[3]

On July 10, 1997, the NASD filed Amendment No. 1 to the proposed rule change proposing to extend the pilot through March 27, 1998 and expand it to 150 stocks.[4] On July 17, 1997, the NASD filed with the Commission Amendment No. 2, to correct a technical deficiency in Amendment No. 1.[5] The proposal was noticed for comment on July 24, 1996.[6]

On September 15, 1997, the NASD filed Amendment No. 3,[7] proposing to extend the pilot as previously noted and to expand the pilot by adding a different group of 100 securities to those 50 currently subject to the Actual Size Rule (''First 50'') than was proposed in Amendment Nos. 1 and 2. The NASD believes that this second group of securities will provide a better basis for comparison and economic analysis comparing the Actual Size Rule's effect on pilot and non-pilot Nasdaq securities. In addition, Nasdaq proposes to replace some of securities in the initial 50 stock pilot that are no longer listed on Nasdaq. Amendment No. 3 also proposed extending the pilot through March 27, 1998.

For the reasons discussed below, the Commission has determined to approve the proposed rule change.

II. Proposed Rule Change

The NASD proposes to amend NASD Rule 4613(a)(1)(C) to allow market makers to quote their actual size by reducing the minimum quotation size requirement for market makers in certain securities listed on Nasdaq to one normal unit of trading. As discussed below, the Actual Size Rule presently applies to a group of 50 Nasdaq securities on a pilot basis. The proposed rule change would expand the pilot group to 150 stocks and extend the pilot until March 27, 1998. The text of the proposed rule change is as follows. (Additions are italicized; deletions are bracketed.)

* * * * *

4613. Character of Quotations

(a) Two-Sided quotations

(1) No Change

(A)–(B) No Change

(C) As part of a pilot program implemented by the Nasdaq Stock Market, during the period January 20, 1997 through at least [December 31, 1997] *March 27, 1998,* a registered market maker in a security listed on the Nasdaq Stock Market that became subject to mandatory compliance with SEC Rule 11Ac1–4 on January 20, 1997 *or identified by Nasdaq as being otherwise subject to the pilot program as expanded and approved by the Commission,* must display a quotation

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

[2] 17 CFR 240.19b–4.

[3] November 18, 1996, the NASD filed with the Commission a proposed rule change to implement the Actual Size Rule on a pilot basis. (SR–NASD–96–43). Among other things, the filing and subsequent amendments proposed to allow market makers to quote in minimum sizes of 100 shares for a three-month pilot Program in the 50 Nasdaq securities subject to mandatory compliance with Exchange Act Rule 11Ac1–4 (''Limit Order Display Rule'') on January 20, 1997. The remaining securities were still subject to the existing minimum quotation display requirements for proprietary quotes. The proposed rule change was intended by the NASD to facilitate the display of customer limit orders in accordance with the Limit Order Display Rule. The Commission approved the pilot through April 18, 1997. Securities Exchange Act Release 38512 (April 15, 1997) 62 FR 19373 (April 21, 1997) (SR–NASD–97–25).

On April 15, 1997, the Commission issued an order granting accelerated approval to a NASD proposed rule change that extended the pilot from April 18, 1997, to July 18, 1997. Securities Exchange Act Release 38512 (April 15, 1997) 62 FR 19373 (April 21, 1997) (SR–NASD–97–25).

On July 18, 1997, the Commission approved a rule change proposed by the NASD to extend the pilot from July 18, 1997 to December 31, 1997. Securities Exchange Act Release No. 38851 (July 18, 1997) 62 FR 39565 (July 23, 1997) (SR–NASD–97–49). The Commission did so to give it additional time to evaluate the economic studies and review the public's comments on the NASD's June 3, 1997, study. In addition, the Commission stated that it believed that extending the pilot would benefit the markets by providing more experience with the Actual Size Rule before a decision is made regarding approval.

[4] See Letter from Robert E. Aber, Vice President and General Counsel, the Nasdaq Stock Market, Inc., to Katherine England, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated July 10, 1997.

[5] See Letter from Robert E. Aber, Vice President and General Counsel, the Nasdaq Stock Market, Inc., to Katherine England, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated July 17, 1997.

[6] Securities Exchange Act Release No. 38872 (July 24, 1997) 62 FR 40879 (July 30, 1997) (SR–NASD–97–26).

[7] See Letter from Robert E. Aber, Vice President and General Counsel, the Nasdaq Stock Market, Inc., to Katherine England, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated September 15, 1997.