

withdraw their quotes or are SOESed-out-of-the-Box is consistent with Sections 15A(b)(6) and 11A of the Exchange Act because the 10 day period will continue to penalize market makers that fail to keep quotes in the market. Reducing the period to 10 days will not diminish the deterrent effect of the penalty because market makers will continue to be penalized economically through the lost trade revenue and will continue to suffer harm to their reputation. In addition, because of the enormous increase in trading on Nasdaq since the 20 day penalty was established, the NASD believes that a 10 day penalty period today may be more severe than the 20 day penalty was in 1988.

Based on the daily average share volume in 1988, which was 122.5 million shares per day, the average share volume on a single day on Nasdaq is equal to approximately 13 days average share volume in 1988. While the daily average share volume is not a direct measure of the amount of business any one particular market maker may lose during a penalty period, the number does not demonstrate the extraordinary increase in trading on Nasdaq. Therefore, the NASD believes that a 10 day penalty period will continue to serve as a significant deterrent. As such, the NASD believes the proposed penalty will continue to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, protect investors and the public interest, and promote the maintenance of fair and orderly markets.

The NASD also believes that allowing market makers until 7:00 p.m. Eastern Time on the day in which they accidentally withdrew their quotes or were SOESed-out-of-the-Box to apply for reinstatement is consistent with Sections 15A(b)(6) and 11A of the Exchange Act. As discussed earlier, the volume of trading on Nasdaq has increased significantly over the past few years. This surge in volume requires market makers to actively manage their quotes and trading in many securities. Due to these increased demands, it is likely that a market maker cannot file a request for reinstatement within one hour from the time its quotes lapse, especially when the quotes lapse in a less actively traded security.

The direct benefit of extending the deadline is that market makers would have more of an opportunity to have their requests considered on the substantive merits. Furthermore, this proposal does not diminish the standards that an applicant must meet to be reinstated. Applications that

comply with the new filing deadline will continue to be reviewed in accordance with the standards codified in NASD Rules 4620 and 4730.

Another potential benefit would be to maintain liquidity in some less actively traded stocks by reducing the potential that a market maker will be subject to the penalty period for procedural reasons only, and, thus, be prohibited from making a market in a stock. For these reasons, the NASD believes that the proposal will promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, protect investors and the public interest, and promote the maintenance of fair and orderly markets.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will impose 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*

Nasdaq neither solicited nor received written comments.

### **III. Date of Effectiveness of the Proposed Rule Change and timing for Commission Act**

Within 35 days of the 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 it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Nasdaq consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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, D.C. 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 at 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-00-61 and should be submitted by December 18, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

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

[FR Doc. 00-30135 Filed 11-24-00; 8:45 am]

**BILLING CODE 8010-01-M**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43583; File No. SR-NASD-00-62]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc., Relating to the Removal of Duplicative Provisions**

November 17, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 19, 2000, 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 the NASD.<sup>3</sup> The Commission is publishing this notice to

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> Nasdaq originally submitted the proposal on October 19, 2000. On November 8, 2000, Nasdaq submitted a letter from Sara Nelson Bloom, Assistant General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission, amending the filing ("Amendment No. 1"). In Amendment No. 1, Nasdaq made several corrections to its rule text and designated the proposed rule change as effective pursuant to Section 19(b)(3)(A)(i) of the Act, and Rule 19b-4(f)(3) thereunder. 15 U.S.C. 78s(b)(3)(A)(i), 17 CFR 240.19b-4(f)(3). Because of the nature of the Amendment, the Commission deems the filing date to be November 8, 2000, the date of the final amendment.

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 is filing with the Commission a proposed rule change regarding revisions to the Nasdaq Marketplace Rules to eliminate duplicative provisions and make conforming changes. Below is the text of the proposed rule change. Additions are *italicized* and deletions are in brackets.

#### 4310. Qualification Requirements for Domestic and Canadian Securities

To qualify for inclusion in Nasdaq, a security of a domestic or Canadian issuer shall satisfy all applicable requirements contained in paragraphs (a) or (b), and (c) hereof.

(a) No change.

(b) No change.

(c) In addition to the requirements contained in paragraph (a) or (b) above, and unless otherwise indicated, a security shall satisfy the following criteria for inclusion in Nasdaq:

(1)–(20) No change.

(21) Deleted and reserved.

(22)–(24) No change.

(25)–(29) Deleted and reserved.

(d) No change.

#### IM–4310. Voting Rights Policy

Renumbered IM–4351 and moved to follow Rule 4351.

#### 4320. Qualification Requirements for Non-Canadian Foreign Securities and American Depositary Receipts

To qualify for inclusion in Nasdaq, a security of a non-Canadian foreign issuer, an American Depositary Receipt (ADR) or similar security issued in respect of a security of a foreign issuer shall satisfy the requirements of paragraphs (a), (b) or (c), and (d) and (e) of this Rule.

(a)–(d) No change.

(e) In addition to the requirements contained in paragraphs (a), (b) or (c), and (d), the security shall satisfy the following criteria for inclusion in Nasdaq:

(1)–(18) No change.

(19) Deleted and reserved.

(20) No change.

(21)–(25) Deleted and reserved.

(f) No change.

Cross reference to IM–4310 is deleted.

#### 4420. Quantitative Designation Criteria

(a)–(g) No change.

(h) *Units*

(1) *Minimum Inclusion Period and Notice of Withdrawal*

*In the case of units, the minimum period for inclusion of the units shall be 30 days from the first day of inclusion, except the period may be shortened if the units are suspended or withdrawn for regulatory purposes. Issuers and underwriters seeking to withdraw units from inclusion must provide*

*Nasdaq with notice of such intent at least 15 days prior to withdrawal.*

(2) *Disclosure Requirements for Units*

*Each Nasdaq National Market issuer of units shall include in its prospectus or other offering document used in connection with any offering of securities that is required to be filed with the Commission under the federal securities laws and the rules and regulations promulgated thereunder a statement regarding any intention to delist the units immediately after the minimum inclusion period.*

#### 4460. Non-Quantitative Designation Criteria for Issuers Excepting Limited Partnership

Cross reference to IM–4310 is deleted.

Renumbered as Rule 4350 and Amended as follows:

#### 4350. [Non-Quantitative Designation Criteria] *Qualitative Listing Requirements for Nasdaq National Market and Nasdaq SmallCap Market Issuers Except[ing] for Limited Partnerships Traded on the Nasdaq National Market*

##### (a) *Applicability*

No provisions of this Rule shall be construed to require any foreign issuer to do any act that is contrary to a law, rule or regulation of any public authority exercising jurisdiction over such issuer or that is contrary to generally accepted business practices in the issuer's country of domicile. Nasdaq shall have the ability to provide exemptions from the applicability of these provisions as may be necessary or appropriate to carry out this intent.

*Nasdaq shall review the issuer's past corporate governance activities. This review may include activities taking place while the issuer is listed on Nasdaq or an exchange that imposes corporate governance requirements, as well as activities taking place after the issuer is no longer listed on Nasdaq or an exchange that imposes corporate governance requirements. Based on such review, Nasdaq may take any appropriate action, including placing of restrictions on or additional requirements for listing, or the denial of listing of a security if Nasdaq determines that there have been violations or evasions of such corporate governance standards. Determinations under this subparagraph shall be made on a case-by-case basis as necessary to protect investors and the public interest.*

##### (b) *Distribution of Annual and Interim Reports*

(1) Each [Nasdaq National Market] issuer shall distribute to shareholders copies of an annual report containing audited financial statements of the company and its subsidiaries. The report shall be distributed to shareholders a reasonable period of time prior to the company's annual meeting of shareholders and shall be filed with Nasdaq at the time it is distributed to shareholders.

(2) Each [NNM] issuer which is subject to SEC Rule 13a–13 shall make available copies of quarterly reports including statements of operating results to shareholders either prior to or as soon as practicable following the company's filing of its Form 10–Q with the Commission. If the form of such quarterly

report differs from the Form 10–Q, the issuer shall file one copy of the report with Nasdaq in addition to filing its Form 10–Q pursuant to Rule 4310(c)(14). The statement of operations contained in quarterly reports shall disclose, as a minimum, any substantial items of an unusual or nonrecurrent nature and net income before and after estimated federal income taxes or net income and the amount of estimated federal taxes.

(3) Each [NNM] issuer which is not subject to SEC Rule 13a–13 and which is required to file with the Commission, or another federal or state regulatory authority, interim reports relating primarily to operations and financial position, shall make available to shareholders reports which reflect the information contained in those interim reports. Such reports shall be made available to shareholders either before or as soon as practicable following filing with the appropriate regulatory authority. If the form of the interim report provided to shareholders differs from that filed with the regulatory authority, the issuer shall file one copy of the report to shareholders with Nasdaq in addition to the report to the regulatory authority that is filed with Nasdaq pursuant to Rule 4310(c)(14).

##### (c) *Independent Directors*

Each [NNM] issuer shall maintain a sufficient number of independent directors on its board of directors to satisfy the audit committee requirement set forth in Rule [4460]4350(d)(2).

##### (d) *Audit Committee*

###### (1) *Audit Committee Charter*

Each Issuer must certify that it has adopted a formal written audit committee charter and that the [A]audit [C]committee has reviewed and reassessed the adequacy of the formal written charter on an annual basis. The charter must specify the following:

(A) the scope of the audit committee's responsibilities, and how it carries out those responsibilities, including structure, processes, and membership requirements;

(B) the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the company, consistent with Independence Standards Board Standard 1, and the audit committee's responsibility for actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to oversee the independence of the outside auditor; and

(C) the outside auditor's ultimate accountability to the board of directors and the audit committee, as representatives of shareholders, and these shareholder representatives' ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement).

###### (2) *Audit Committee Composition*

(A) Each issuer must have, and certify that it has and will continue to have, an audit

committee of at least three members, comprised solely of independent directors, each of whom is able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement or will become able to do so within a reasonable period of time after his or her appointment to the audit committee. Additionally, each issuer must certify that it has, and will continue to have, at least one member of the audit committee that has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

(B) Notwithstanding paragraph (A), one director who is not independent as defined in Rule 4200, and is not a current employee or an immediate family member of such employee, may be appointed to the audit committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the board discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination.

(C) Exception for Small Business Filers— Paragraphs (2)(A) and (2)(B) do not apply to issuers that file reports under SEC Regulation S-B. Such issuers must establish and maintain an [A]audit [C]committee of at least two members, a majority of the members of which shall be independent directors.

#### (e) Shareholder Meetings

Each [NNM] issuer shall hold an annual meeting of shareholders and shall provide notice of such meeting to Nasdaq.

#### (f) Quorum

Each [NNM] issuer shall provide for a quorum as specified in its by-laws for any meeting of the holders of common stock; provided, however, that is no case shall such quorum be less than 33⅓ [percent] % of the outstanding shares of the company's common voting stock.

#### (g) Solicitation of Proxies

Each [NNM] issuer shall solicit proxies and provide proxy statements for all meetings of shareholders and shall provide copies of such proxy solicitation to Nasdaq.

#### (h) Conflicts of Interest

Each [NNM] issuer shall conduct an appropriate review of all related party transactions on an ongoing basis and shall utilize the company's [A]audit [C]committee or a comparable body of the [B]board of [D]directors for the review of potential conflict of interest situations where appropriate.

#### (i) Shareholder Approval

(1) Each [NNM] issuer shall require shareholder approval of a plan or arrangement under subparagraph (A) below, or prior to the issuance of designated

securities under subparagraph (B), (C), or (D) below:

(A) When a stock option or purchase plan is to be established or other arrangement made pursuant to which stock may be acquired by officers or directors, except for warrants or rights issued generally to security holders of the company or broadly based plans or arrangements including other employees (e.g., ESOPs). In a case where the shares are issued to a person not previously employed by the company, as an inducement essential to the individual's entering into an employment contract with the company, shareholder approval will generally not be required. The establishment of a plan or arrangement under which the amount of securities which may be issued does not exceed the lesser of 1% of the number of shares of common stock, 1% of the voting power outstanding, or 25,000 shares will not generally require shareholder approval;

(B) When the issuance or potential issuance will result in a change of control of the issuer;

(C) In connection with the acquisition of the stock or assets of another company if:

(i) Any director, officer or substantial shareholder of the issuer has a 5% or greater interest (or such persons collectively have a 10% or greater interest), directly or indirectly, in the company or assets to be acquired or in the consideration to be paid in the transaction or series of related transactions and the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, could result in an increase in outstanding common shares or voting power of 5% or more; or

(ii) Where, due to the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, other than a public offering for cash:

a. The common stock has or will have upon issuance voting power equal to or in excess of 20% of the voting power outstanding before the issuance of stock or securities convertible into or exercisable for common stock; or

b. The number of shares of common stock to be issued is or will be equal to or in excess of 20% of the number of shares of common stock outstanding before the issuance of the stock or securities; or

(D) In connection with a transaction other than a public offering involving:

(i) The sale, issuance or potential issuance by the issuer of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which together with sales by officers, directors or substantial shareholders of the company equals 20% or more of common stock or 20% or more of the voting power outstanding before the issuance; or

(ii) The sale, issuance or potential issuance by the company of common stock (or securities convertible into or exercisable common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock.

(2) Exceptions may be made upon application to Nasdaq when:

(A) The delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise; and

(B) Reliance by the company on this exception is expressly approved by the [A]audit [C]committee or a comparable body of the [B]board of [D]directors.

A company relying on this exception must mail to all shareholders not later than ten days before issuance of the securities a letter alerting them to its omission to seek the shareholder approval that would otherwise be required and indicating that the [A]audit [C]committee [of the Board] or a comparable body of the board of directors has expressly approved the exception.

(3) Only shares actually issued and outstanding (excluding treasury shares or shares held by a subsidiary) are to be used in making any calculation provided for in this paragraph (i). Unissued shares reserved for issuance upon conversion of securities or upon exercise of options or warrants will not be regarded as outstanding.

(4) Voting power outstanding as used in this rule refers to the aggregate number of votes which may be cast by holders of those securities outstanding which entitle the holders thereof to vote generally on all matters submitted to the company's security holders for a vote.

(5) An interest consisting of less than either 5% of the number of shares of common stock or 5% of the voting power outstanding of an issuer or party shall not be considered a substantial interest or cause the holder of such an interest to be regarded as a substantial security holder.

(6) Where shareholder approval is required, the minimum vote which will constitute shareholder approval shall be a majority of the total votes cast on the proposal in person or by proxy.

*Cross Reference IM-4300, Future Priced Securities*

#### (j) Voting Rights

(1) No rule, stated policy, practice, or interpretation of Nasdaq shall permit the authorization for quotation and/or transaction reporting through an automated inter-dealer quotation system (authorization), or the continuance of authorization, of any common stock or other equity security of a domestic issuer, if the issuer of such security issues any class of security, or takes other corporate action, with the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock of such issuer registered pursuant to section 12 of the Act.

(2) For the purposes of paragraph (j)(1), the following shall be presumed to have the effect of nullifying, restricting, or disparately reducing the per share voting rights of an outstanding class or classes of common stock:

(A) Corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a beneficial or record holder based on the number of shares held by such beneficial or record holder;

(B) Corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a

beneficial or record holder based on the length of time such shares have been held by such beneficial or record holder;

(C) Any issuance of securities through an exchange offer by the issuer for shares of an outstanding class of the common stock of the issuer, in which the securities issued have voting rights greater than or less than the per share voting rights of any outstanding class of the common stock of the issuer; or

(D) Any issuance of securities pursuant to a stock dividend, or any other type of distribution of stock, in which the securities issued have voting rights greater than the per share voting rights of any outstanding class of the common stock of the issuer.

(3) For the purposes of paragraph (j)(1), the following, standing alone, shall be presumed not to have the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock:

(A) The issuance of securities pursuant to an initial registered public offering;

(B) The issuance of any class of securities, through a registered public offering, with voting rights not greater than the per share voting rights of any outstanding class of the common stock of the issuer;

(C) The issuance of any class of securities to effect a bona fide merger or acquisition, with voting rights not greater than the per share voting rights of any outstanding class of the common stock of the issuer; or

(D) Corporate action taken pursuant to state law requiring a state's domestic corporation to condition the voting rights of a beneficial or record holder of a specified threshold percentage of the corporation's voting stock on the approval of the corporation's independent shareholders.

(4) The following terms shall have the following meanings for purposes of this Rule:

(A) The term "common stock" shall include any security of an issuer designated as common stock and any security of an issuer, however designated which, by statute or by its terms, is a common stock (*e.g.*, a security which entitles the holders thereof to vote generally on matters submitted to the issuer's security holders for a vote).

(B) The term "equity security" shall include any equity security defined as such pursuant to SEC Rule 3a11-1 under the Act.

(C) The term "domestic issuer" shall mean an issuer that is not a "foreign private issuer" as defined in SEC Rule 3b-4 under the Act.

(D) The term "security" shall include any security defined as such pursuant to Section 3(a)(10) of the Act, but shall exclude any class of security having a preference or priority over the issuer's common stock as to dividends, interest payments, redemption or payments in liquidation, if the voting rights of such securities only become effective as a result of specified events, not relating to an acquisition of the common stock of the issuer, which reasonably can be expected to jeopardize the issuer's financial ability to meet its payment obligations to the holders of that class of securities.

*Cross Reference—IM-4310, Voting Rights Policy*

#### (k) Listing Agreement

Each [NNM] issuer shall execute a Listing Agreement in the form designated by Nasdaq.

#### (l) Units

##### (1) Minimum Inclusion Period and Notice of Withdrawal

In the case of units, the minimum period for inclusion of the units shall be 30 days from the first day of inclusion, except the period may be shortened if the units are suspended or withdrawn for regulatory purposes. Issuers and underwriters seeking to withdraw units from inclusion must provide Nasdaq with notice of such intent at least 15 days prior to withdrawal.

##### (2) Disclosure Requirements for Units

Each Nasdaq National Market issuer of units shall include in its prospectus or other offering document used in connection with any offering of securities that is required to be filed with the Commission under the federal securities laws and the rules and regulations promulgated thereunder a statement regarding any intention to delist the units immediately after the minimum inclusion period.

#### (m) (k) Peer Review

(1) Each issuer must be audited by an independent public accountant that:

(A) Has received an external quality control review by an independent public accountant ("peer review") that determines whether the auditor's system of quality control is in place and operating effectively and whether established policies and procedures and applicable auditing standards are being followed; or

(B) Is enrolled in a peer review program and within 18 months receives a peer review that meets acceptable guidelines.

(2) The following guidelines are acceptable for purposes of *this* paragraph [(m)]:

(A) The peer review should be comparable to AICPA standards included in Standards for Performing on Peer Reviews, codified in the AICPA's SEC Practice Section Reference Manual;

(B) The peer review program should be subject to oversight by an independent body comparable to the organizational structure of the Public Oversight Board as codified in the AICPA's SEC Practice Section Reference Manual; and

(C) The administering entity and the independent oversight body of the peer review program must, as part of their rules of procedure, require the retention of the peer review working papers for 90 days after acceptance of the peer review report and allow Nasdaq access to those working papers.

#### (n) Direct Registration Program

If an issuer establishes or maintains a Direct Registration Program for its shareholders, the issuer shall, directly or through its transfer agent, participate in an electronic link with a securities depository registered under Section 17A of the Exchange Act to facilitate the electronic transfer of securities held pursuant to such program.

#### 4351. Voting Rights

*Voting rights of existing shareholders of publicly traded common stock registered under Section 12 of the Act cannot be disparately reduced or restricted through any corporate action or issuance. Examples of such corporate action or issuance include, but are not limited to, the adoption of time-phased voting plans, the adoption of capped voting rights plans, the issuance of super-voting stock, or the issuance of stock with voting rights less than the per share voting rights of the existing common stock through an exchange offer.*

*Cross Reference IM-4300, Future Priced Securities*

*IM-4351, Voting Rights Policy*

Text of existing IM-4310 relocated here.

#### 4470. [Non-Quantitative Designation Critical Qualitative Listing Requirements for Nasdaq National Market Issuers That Are Limited Partnerships]

##### (a) Applicability

No change.

##### (b) Distribution of Annual and Interim Reports

No change.

##### (c) Corporate General Partner/Independent Directors

Each issuer that is a limited partnership shall maintain a corporate general partner or co-general partner, which shall have the authority to manage the day-to-day affairs of the partnership. Such corporate general or co-partner shall maintain a sufficient number of independent directors on its board of directors to satisfy the audit committee requirement set forth in Rule [4460]4350(d)(2).

##### (d) Audit Committee

The corporate general partner or co-general partner of each issuer that is a limited partnership must satisfy the audit committee requirements set forth in Rule [4460]4350(d).

(e)-(i) No change.

#### 4480. Termination Procedure

(a) Failure to maintain compliance with the provisions of Rules 4350, 4450, [4460], or 4470 will result in the termination of an issuer's designation unless an exception is granted as provided in the Rule 4800 Series. Termination shall become effective in accordance with the terms of notice by Nasdaq.

(b) No change.

#### IM-4300. Interpretive Material Regarding Future Priced Securities Summary

No change.

#### How the Rules Apply

##### Shareholder Approval

NASD Rule 4350(i)(1)(D)[4310(c)(25)(H)(i) relating to Nasdaq SmallCap issuers and Rule 4460(i)(1) relating to Nasdaq National Market issuers] provides, in part:

Each issuer shall require shareholder approval \* \* \* prior to the issuance of designated securities \* \* \* in connection

with a transaction other than a public offering involving \* \* \* the sale, issuance or potential issuance by the issuer of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which together with sales by officers, directors or substantial shareholders of the company equals [equal to] 20 [percent] % or more of the common stock or 20 [percent] % or more of the voting power outstanding before the issuance [for less than the greater of book or market value of the stock].<sup>4</sup>

\* \* \* \* \*

Some Future Priced Securities may contain features to obviate the need for shareholder approval by: (1) placing a cap on the number of shares that can be issued upon conversion, such that the holders of the Future Priced Security cannot, without prior shareholder approval, convert the security into 20 [percent] % or more of the common stock or voting power outstanding before the issuance of the Future Priced Security;<sup>5</sup> or (2) placing a floor on the conversion price, such that the conversion price will always be at least as high as the greater of book or market value of the common stock prior to the issuance [emphasis added] of the Future Priced Securities. Even when a Future Priced Security contains these features, however, shareholder approval is still required under Rule[s] 4310(c)(25)(H)(i)(b) and 4460] 4350(i)(1)(B) if the issuance will result in a change of control.

#### Voting Rights

NASD Rule [4310(c)(21)] 4351 provides:

Voting rights of existing shareholders of publicly traded common stock registered under Section 12 of the Act cannot be disparately reduced or restricted through any corporate action or issuance.

[Rule 4460(j) and] IM-[4310] 4351 also provides rules relating to voting rights of Nasdaq issuers.

\* \* \* \* \*

#### The Bid Price Requirement

No change.

#### Listing of Additional Shares

NASD Rule 4310(c)(17) provides:

["The issuer shall be required to file on a form designated by Nasdaq notification of \* \* \* the issuance of additional shares of any class of securities included in Nasdaq \* \* \* no later than 15 calendar days prior to \* \* \* the issuance of additional shares."]

The issuer shall be required to notify Nasdaq on the appropriate form no later than

<sup>4</sup> Nasdaq may make exceptions to this requirement when the delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise and reliance by the company on this exception is expressly approved by the Audit Committee or a comparable body of the Board of Directors.

<sup>5</sup> In order to obviate the need for shareholder approval through such an arrangement, those shares already issued in connection with the Future Priced Security must not be entitled to vote on the proposal to approve the issuance of additional shares upon conversion of the Future Priced Security.

15 calendar days prior to: \* \* \* issuing securities that may potentially result in a change of control of the issuer, or \* \* \* entering into a transaction that may result in the potential issuance of common stock (or securities convertible into common stock) greater than 10% of either the total shares outstanding or the voting power outstanding on a pre-transaction basis.

Issuers should be cognizant that under this rule notification is required at least 15 days PRIOR [emphasis added] to issuing any security (including a Future Priced Security) convertible into shares of a class of securities already listed on Nasdaq. Failure to provide such notice can result in an issuer's removal from Nasdaq.

#### Public Interest Concerns

No change.

#### Change of Control and Change in Financial Structure

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, the NASD 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. The NASD has prepared summaries, set forth in Section 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

Currently, Nasdaq issuers and their counsel must navigate through three sets of Corporate Governance requirements depending on whether the issuer is a Nasdaq SmallCap Market issuer or a Nasdaq National Market issuer and whether the issuer is domestic or foreign. These three sets of rules, however, are largely identical. Furthermore, the layout of and citation to some of these rules is extremely cumbersome. For example, a SmallCap issuer seeking information about shareholder approval in connection with an acquisition of another company would have to look at Rule 4310(c)(25)(G)(i)(c)(2)(A). Accordingly, in an effort to simplify the Marketplace Rules and make them more user friendly, Nasdaq proposes to eliminate the duplication of these rules and have the Corporate Governance rules appear in a single location applicable to all

issuers,<sup>6</sup> other than Limited Partnerships traded on the Nasdaq National Market. The comparable rules relating to Limited Partnerships would not be combined with those of other issuers because of the unique structure of Limited Partnerships, the fact that different corporate governance rules apply to such issuers, and the fact that the existing Limited Partnership rules only apply to Nasdaq National Market issuers.

To give effect to this change, the Nasdaq proposes to have the corporate governance sections of current Rule 4310 (relating to domestic SmallCap issuers) and Rule 4320 (relating to foreign SmallCap issuers) deleted.<sup>7</sup> Nasdaq proposes to have existing Rule 4460 (which now relates only to National Market issuers other than Limited Partnerships) be renumbered to Rule 4350 and amended to apply to all Nasdaq issuers.<sup>8</sup>

The language of the voting rights rules presently differ between the SmallCap Market and National Market. Nasdaq, however, has applied these rules consistently across the two markets. In fact, when the voting rights rules were first adopted for the Small Cap Market, Nasdaq stated that it would interpret the rules of both market segments uniformly.<sup>9</sup> Nasdaq does not believe that the disparity in language between the two markets serves any useful purpose and proposes adopting a single voting rights rule applicable to both markets. Further, Nasdaq believes that this change will give effect to the SEC's goal that Nasdaq, the American Stock Exchange ("Amex"), and the New York Stock Exchange ("NYSE") all adopt a uniform policy with respect to the voting rights of common stock shareholders.<sup>10</sup> Accordingly, Nasdaq proposes eliminating the existing Rule 4460(j) and incorporating existing Rule

<sup>6</sup> The Rule 4300 Series applies to all Nasdaq issuers. Nasdaq National Market issuers must also comply with the Rule 4400 Series.

<sup>7</sup> In addition to the primary corporate governance sections, those sections relating to voting rights, audit committees, listing agreements, auditor peer review, and direct registration programs would also be combined in the new rules applicable to all issuers.

<sup>8</sup> Nasdaq represents that one provision of Rule 4460 is not being moved to Rule 4350. The Units provision (existing Rule 4460(l)) will be moved to existing Rule 4420 because it contains a provision, Disclosure Requirements for Units, that solely applies to Nasdaq National Market issuers. Telephone conversation between Arnold Golub, Senior Attorney, Office of General Counsel, Nasdaq, and Lisa Jones, Attorney, Division, Commission, November 17, 2000.

<sup>9</sup> See Securities Exchange Act Release No. 34518 (August 11, 1994), 59 FR 42614 (August 18, 1994) ("Voting Rights Release").

<sup>10</sup> See *Id.*

4310(c)(21)<sup>11</sup> into new Rule 4351. The Voting Rights Policy presently located at IM-4310 would be relocated as IM-4351.

## 2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>12</sup> which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The changes proposed are designed to simplify the use of Nasdaq's rules by issuers and investors.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will impose any burden on competition.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NASD has neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act<sup>13</sup> and Rule 19b-4(f)(3) thereunder because it is concerned solely with the administration of the NASD.<sup>14</sup> At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

## IV. 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 submissions 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 at the principal office of the NASD.

All submissions should refer to File No. SR-NASD-00-62 and should be submitted by December 18, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 00-30136 Filed 11-24-00; 8:45 am]

**BILLING CODE 8010-01-M**

## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Emergency Consideration Request

In compliance with Public Law 104-13, the Paperwork Reduction Act of 1995, the Social Security Administration (SSA) is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is requesting emergency consideration from OMB by 12/06/2000 of the information collections listed below.

1. Beneficiary Interview and Auditor's Observations Form-0960-NEW.

The information collected through the Beneficiary Interview and Auditor's Observations form, SSA-322, will be used by SSA's Office of the Inspector General (OIG) to interview beneficiaries and/or their caregivers to determine whether representative payees are complying with their duties and responsibilities. Respondents to this collection will be randomly selected Supplemental Security Income recipients and Social Security beneficiaries that have representative payees.

*Number of Respondents:* 150.

*Frequency of Response:* 1.

*Average Burden Per Response:* 15 minutes.

*Estimated Annual Burden:* 38 hours.

<sup>15</sup> 17 CFR 200.30-30-2(a)(12).

## Background Information

In May of this year Congress held hearings on SSA's representative payee program. These hearings were the result of an investigation conducted by SSA's OIG involving a representative payee who embezzled over \$300,000 of Social Security payments, and recent media attention. Following these hearings SSA began a number of initiatives to improve oversight of representative payees. One of the initiatives requested by Congress was for OIG to perform audits of representative payees. Specifically, Congress requested an independent OIG review and assessment of SSA's representative payee program. In conjunction with this oversight, Congress has further advised SSA that briefings on the representative payee program are expected and additional congressional hearings are planned in early spring. This information collection is therefore necessary to comply with the congressional reporting requirements in a timely manner and to augment other data needed for determining whether representative payees are complying with their duties.

You can obtain a copy of the collection instruments and/or OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965-4145, or by writing to him.

### SSA Address

Social Security Administration,  
DCFAM, Attn: Frederick W.  
Brickenkamp, 6401 Security Blvd., 1-  
A-21 Operations Bldg., Baltimore,  
MD 21235

Dated: November 20, 2000.

**Frederick W. Brickenkamp,**  
Reports Clearance Officer.

[FR Doc. 00-30082 Filed 11-24-00; 8:45 am]

**BILLING CODE 4120-29-U**

## DEPARTMENT OF STATE

[Public Notice No. 3464]

### Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, 2201 "C" Street NW, Washington, D.C., December 11-12, 2000 in Conference Room 1105. Prior notification and a valid photo are mandatory for entrance into the building. One week before the meeting, members of the public planning to attend must notify Gloria Walker, Office of Historian (202-663-1124) providing relevant dates of birth,

<sup>11</sup> Existing Rule 4310(c)(21) is identical to the voting rights rules on the NYSE and Amex. See NYSE Listed Company Manual Section 313 and Amex Company Guide Section 122.

<sup>12</sup> 15 U.S.C. 78o-3(b)(6).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>14</sup> 17 CFR 240.19b-4(f)(3).