

company, or voluntarily delists for another market. Occasionally, common stock will be callable, that is, subject to being called away from a shareholder, either by the issuer or a third party. Typically, the price at which callable common stock is called away from a shareholder is at a premium to the then prevailing market price or pursuant to a schedule of prices announced at the time the common stock is issued.⁴

An investor purchasing callable common stock is subject to unique risks not typically associated with ownership of common stock, even where such stock is called away at a premium. Moreover, the ability of an issuer's common stock to be called away from a shareholder generally will be a material fact to an investor. Accordingly, NASD Regulation believes that high standards of commercial honor and just and equitable principles of trade require that any member that provides a written confirmation for a transaction involving callable common stock must disclose on the confirmation that the security is callable and that the customer may contact the member for more information. NASD Regulation emphasizes that the disclosure of the call feature on the confirmation in no way relieves a member of its obligation to consider the callable nature of the security when complying with any applicable suitability obligations.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁵ which requires, among other things, that the Association's rules 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. NASD Regulation believes that callable common stock is subject to unique and material risks not typically associated with ownership of common stock; therefore, any member that provides a written confirmation for a transaction involving callable common stock must disclose that the security is callable and that the customer may contact the member for more information.

⁴ Because callable common stock combines the features of more than one category of securities (*i.e.*, common stock and a call option), the staff of The Nasdaq Stock Market will evaluate whether callable common stock is eligible for inclusion in the Nasdaq National Market pursuant to the "other securities" provisions of NASD Rule 4420(f).

⁵ 15 U.S.C. 78o-3(b)(6).

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

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate.

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

NASD Regulation has neither solicited nor received written comments.

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

The proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule and, therefore, has become effective upon filing pursuant to section 19(b)(3)(A)(i) of the Act⁶ and paragraph (f)(1) of Rule 19b-4 thereunder.⁷

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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 purposes 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, 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer SR-NASD-00-24 and should be submitted by June 1, 2000.

⁶ 15 U.S.C. 78s(b)(3)(A)(i).

⁷ 17 C.F.R. 240.19b-4(f)(1).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 00-11806 Filed 5-10-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42760; File No. SR-NASD-99-26]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Denial of Access Procedures

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 27, 1999, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("Commission") the proposed rule change. The Association submitted Amendment No. 1 to its proposal on August 24, 1999.³ The proposed rule change, as amended, is described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.⁴

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

NASD Regulation is proposing to amend the NASD Rule 9510 Series of the National Association of Securities Dealers, Inc. ("NASD" or "Association") to: (i) Expand the circumstances under which an aggrieved Party may request a hearing to challenge an Association action that the Party believes constitutes a "denial of access;" (ii) expand the pool of potential hearing panelists in

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the NASD clarified: (1) Operational distinctions between the NASD Regulation and the NASD; (2) what initiates a proceeding; and (3) other technical matters. See Restated 19b-4 filing marked Amendment No. 1 ("Amendment No. 1").

⁴ Technical and clarifying changes to the notice were made pursuant to a telephone conversation between Eric Moss, Assistant General Counsel, Office of the General Counsel, NASD Regulation, and Katherine England, Assistant Director, Division of Market Regulation, Commission, on April 28, 2000.

denial of access proceedings, and simplify the process by which panelists are selected; (iii) establish the General Counsel for the NASD as the custodian of the record in denial of access cases; and (iv) make other changes. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

9000. CODE OF PROCEDURE

9120. Definitions

(a) through (w) No change.

(x) "Party"

With respect to a particular proceeding, the term "Party" means:

(1) through (2) No change.

(3) in the Rule 9510 Series, the department or office designated under Rule 9514(b) or a member or person that is the subject of a notice under Rule 9512 or Rule 9513(a) *or an aggrieved Party who initiates a proceeding under Rule 9513(b) to review an action taken by the Association under Rule 9511(a)(2)(B); or*

(4) No change.

(y) through (cc) No change.

* * * * *

9500. OTHER PROCEEDINGS

9510. Summary and Non-Summary Proceedings

9511. Purpose and Computation of Time

(a) Purpose

The Rule 9510 Series sets forth procedures for *the conduct and review of*: (1) summary proceedings authorized by Section 15A(h)(3) of the Act; [and] non-summary proceedings [to impose] *regarding the imposition of* (A) a suspension or cancellation for failure to comply with an arbitration award or a settlement agreement related to an arbitration or mediation pursuant to Article VI, Section 3 of the NASD By-Laws; (B) a suspension or cancellation of a member, or a limitation or prohibition on any member, associated person, or other person with respect to access to services offered by the Association or a member thereof, if the Association determines that such member or person does not meet the qualification requirements or other prerequisites for such access or such member or person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the Association; (C) an advertising pre-use filing requirement; *or (D) a suspension or cancellation of the membership of a member or the registration of a person for failure to comply with a permanent cease and desist order entered pursuant to a*

*decision issued under the Rule 9200 Series or Rule 9300 Series or a temporary cease and desist order entered pursuant to a decision issued under the Rule 9800 Series.*⁵

(b) No Change.

* * *

9513. Initiation of Proceedings for Non-Summary Limitation, or Prohibition [Non-Summary Proceeding]

(a) *Initiation of Proceeding by Association* [Notice]

No change.

(b) *Initiation of Proceeding by Aggrieved Party*

An aggrieved Party may initiate a proceeding authorized under Rule 9511(a)(2)(B) by filing a request for a hearing under Rule 9514 to challenge the Association's actions.

(c) Effective Date

For any cancellation or suspension or pursuant to Rule 9511(a)(2)(A), the effective date shall be at least 15 days after service of the notice on the member or associated person. For any action taken pursuant to Rule 9511(a)(2)(B) or (D), the effective date shall be at least seven days after service of the notice on the member or person, *or the date when the Party otherwise learns of the limitation or prohibition on access to services (which ever occurs first).* E[except that the effective date for a notice of a limitation or prohibition on access to services offered by the Association or a member thereof with respect to services to which the member, associated person, or other

⁵ The language in proposed NASD Rule 9511(a) reflects proposed language changes from pending File No. SR-NASD-98-80. See Securities Exchange Act Release No. 40826 (December 22, 1998); 63 FR 71984 (December 30, 1998) (Proposed rule change to enable the NASD to issue temporary cease and desist orders). In SR-NASD-98-80, NASD Regulation proposed modifying NASD Rule 9511(a) as follows (additions are *italicized*; deletions are [bracketed]): "The Rule 9510 Series sets forth procedures for: (1) summary proceedings authorized by Section 15A(h)(3) of the Act; and (2) non-summary proceedings to impose (A) a suspension or cancellation for failure to comply with an arbitration award or a settlement agreement related to an arbitration or mediation pursuant to Article VI, Section 3 of the NASD By-Laws; (B) a suspension or cancellation of a member, or a limitation or prohibition on any member, associated person, or other person with respect to access to services offered by the Association or a member thereof, if the Association determines that such member or person does not meet the qualification requirements or other prerequisites for such access or such member or person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the Association; [or] (C) an advertising pre-use filing requirement; *or (D) a suspension or cancellation of the membership of a member of the registration of a person for failure to comply with a permanent cease and desist order entered pursuant to a decision issued under the Rule 9200 Series or Rule 9300 Series or a temporary cease and desist order entered pursuant to a decision issued under the Rule 9800 Series.*"

person does not have access *or is requesting expanded access*, shall be upon receipt of the notice, *or the date when the Party otherwise learns of a limitation or prohibition on access to services (whichever occurs first).*⁶

9514. Hearing and Decision

(a) Request

(1) Request by Member, Associated Person, or Other Person

A member, associated person, or other person who is subject to a notice issued under Rule 2210, 2220, 9512(a), or 9513(a) *or who initiates a proceeding under rule 9513(b)*, may file a written request for a hearing with the General Counsel for the NASD [Association]. The request shall state the specific grounds for *requesting the hearing to review the Association's action(s)* [setting aside the notice]. The request shall be filed pursuant to Rules 9135, 9136, and 9137 within seven days after service of the notice under Rule 9512 or 9513(a), [or,] with respect to notice of a pre-use filing requirement under Rule 2210(c)(4) and Rule 2220(c)(2), within 30 days of such notice, *or with respect to a proceeding initiated under rule 9513(b), within seven days after the date that the Party learns of the anticipated Association action for which the Party is seeking review.* The member, associated person, or other person may withdraw its request for a hearing at any time by filing a written notice with the Association pursuant to Rules 9135, 9136, and 9137.

In the event that the Association issues a notice under Rule 9513(a) regarding limitation or prohibition will respect to access to services offered by the Association, or a member thereof, and an aggrieved party also attempts to initiate a proceeding under Rule 9513(b) to challenge the Association action covered by the notice issued under Rule 9513(a), the aggrieved party will be entitled to one hearing on the matter. The proceeding will be deemed to be initiated by the notice issued under Rule 9513(a), unless the aggrieved party has mailed or otherwise served on the Association the request for hearing prior to receiving the notice, which case, the

⁶ In SR-NASD-98-80, NASD Regulation proposed modifying NASD Rule 9513(b) as follows: "For any cancellation or suspension pursuant to Rule 9511(a)(2)(A), the effective date shall be at least 15 days after service of the notice on the member or associated person. For any action taken pursuant to Rule 9511(a)(2)(B) or (D), the effective date shall be at least seven days after service of the notice on the member or person, except that the effective date for a notice of a limitation or prohibition on access to services offered by the Association or a member thereof with respect to services to which the member, associated person, or other person does not have access shall be upon receipt of the notice." See note 5, above.

proceeding will be deemed to be initiated by the request for hearing under Rule 9513(b).

(2) Failure to File Request

If the member, associated person, or other person subject to the notice issued under Rule 2210, 2220, 9512(a), or 9513(a) does not file a written request for a hearing under subparagraph (1), the notice shall constitute final action by the Association. *For purposes of proceedings initiated under Rule 9513(b), if a member, associated person, or other person does not file a written request for a hearing pursuant to subparagraph (1) of the Rule, the Association's action with respect to a limitation or prohibition on access to services will constitute final Association action.*

(3) Ex Parte Communications

No change.

(b) Designation of Party for the Association and Appointment of Hearing Panel

If a member, associated person, or other person subject to a notice under Rule 2210, 2220, 9512, or 9513(a) files a written request for a hearing or initiates a proceeding under Rule 9513(b), an appropriate department or office of the Association shall be designated as a Party in the proceeding, and a Hearing Panel shall be appointed.

(1) If the President of NASD Regulation or NASD Regulation staff issued the notice initiating the proceeding under Rule 2210, 2220, 9512(a), or 9513(a), or if an aggrieved party initiates a hearing under Rule 9513(b) to challenge NASD Regulation staff action(s), the President of NASD Regulation shall designate an appropriate NASD Regulation department or office as Party. For proceeding initiated under Rule 9513(a) concerning failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or medication, the Chief Hearing Officer shall appoint a Hearing Panel composed of a Hearing Office. For any other proceedings initiated under Rule 2210, 2220, 9512(a) or 9513(a) by the President of NASD Regulation or NASD Regulation staff, the NASD Regulation Board shall appoint a Hearing Panel composed of two or more members; one member shall be a Director of NASD Regulation, and the remaining member or members shall be *Hearing Officer(s) or current or former Directors of NASD Regulation or Governors.* The President of NASD Regulation may not serve on a Hearing Panel.

(2) If the President of Nasdaq or Nasdaq staff issued the notice under Rule 9512(a) or 9513(a) or if an

aggrieved party initiates a hearing under Rule 9513(b) to challenge Nasdaq staff action(s), the President of Nasdaq shall designate an appropriate Nasdaq department or office as a Party, and the Nasdaq Board shall appoint a Hearing Panel. The Hearing Panel shall be composed of two or more members. One member shall be director of Nasdaq, and the remaining member or members shall be *Hearing Officers* or current or former directors of Nasdaq or Governors. The President of Nasdaq may not serve on the Hearing Panel.

(c) Stays

(1) Summary Proceeding

No change.

(2) Non-Summary Proceeding

Unless the NASD Board or the Executive Committee of the NASD Board orders otherwise, a request for a hearing shall stay the notice issued under Rule 2210, 2220, [or] 9513 (a), or the Association action challenged under Rule 9513(b), except that a request for a hearing shall not stay: (i) a notice of a limitation or prohibition on services offered by the Association or a member thereof with respect to services to which a member, associated person, or other person does not have access or is requesting expanded access; or (ii) the Association action challenged under Rule 9513(b) with respect to services to which a member, associated person, or other person does not have access or is requesting expanded access.

(d) Time of Hearing

(1) Summary Proceeding

No change.

(2) Non-Summary Proceeding

If a member, associated person, or other person [who is subject to a notice issued under Rule 2210, 2220, or 9513(a)] files a written request for a hearing under 9514(a) (except for proceedings brought under 9512(a)), a hearing shall be held within 21 days after the filing of the request for hearing. The Hearing Panel may, during the initial 21 day period, extend the time in which the hearing shall be held by an additional 21 days on its own motion or at the request of a Party for good cause shown. Not less than five days before the hearing, the Hearing Panel shall provide written notice to the Parties of the location date, and time of the hearing by facsimile or overnight commercial courier.

(e) Transmission of Documents

(1) Not less than five days before the hearing, the Association shall provide to the member, associated person, or other person who requested the hearing, by facsimile or overnight commercial courier, all documents that were considered in issuing the notice under Rule 2210, 2220, 9512, or 9513, or were

considered by the Association in making the determination to take the action being challenged under Rule 9513(b), unless a document meets the criteria of Rule 9251(b)(1)(A), (B), or (C). A document that meets such criteria shall not constitute part of the record, but shall be retained by the Association until the date upon which the Association serves a final decision and the period for review lapses or, if applicable, upon the conclusion of any review by the Commission or the federal courts.

(2) No change.

(f) Hearing Panel Consideration

(1) through (4) No change.

(5) Custodian of the Record

[If the President of NASD Regulation or NASD Regulation staff initiated the proceeding under Rule 2210, 2220, 9512, or 9513, t]The [Office of the] General Counsel of NASD [Regulation] shall be the custodian of the record for proceedings initiated under Rule 2210, 2220, 9512, or 9513, except that the Office of Hearing Officers shall be the custodian of record for proceedings initiated under Rule 9513(a) concerning failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation. [If the President of Nasdaq or Nasdaq staff initiated the proceeding under Rule 9512 or 9513, the Office of General Counsel of Nasdaq shall be the custodian of the record.]

(6) No change.

(g) Decision of the Hearing Panel

(1) through (2) No change.

(3) Contents of Decision

The decision shall include:

(A) through (B) No change.

(C) if applicable, the grounds for issuing the notice under Rule 2210, 2220, 9512, or 9513(a);

(D) if applicable, either: (i) an explanation why the action being challenged under Rule 9513(b) is not a limitation or prohibition on access to services subject to review under Section 19 of the Act; or (ii) the grounds for the limitation or prohibition to access to service that is the basis for the proceeding;

(E) a statement of findings of fact with respect to any act or practice that was alleged to have been committed or omitted by the member, associated person, or other person;

(F)[(E)] a statement in support of the disposition of the principal issues raised in the proceedings; and

(G)[(F)] if a summary suspension, limitation, or prohibition continues to be imposed, the specific grounds for imposing such suspension, limitation, or prohibition, and the terms of the suspension, limitation, or prohibition;

or, if a non-summary suspension, cancellation, bar, limitation, prohibition or pre-use filing requirement is to be imposed or continue to be imposed, its effective date, time, and terms.

(4) 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, NASD Regulation included statements concerning the purpose of, and statutory 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. NASD Regulation has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

A. Initiating Denial of Access Proceedings. Currently, before the Association takes an action that it believes constitutes a denial of access, the Association issues a notice under NASD Rule 9513 that informs a Party that: (1) it is taking such an action; and (2) the Party has a right to appeal the matter. Under NASD Rule 9514, a Party may not request a hearing to challenge an alleged denial of access unless the requisite notice was issued under NASD Rule 9513.

Under the current procedures, the Association is generally the "gatekeeper" to the appeal process because the NASD must make the legal conclusion⁷ that a matter constitutes a denial of access to services requiring the issuance of a notice. The current rules create difficulties in situations where the NASD does not issue an NASD Rule 9513 notice because it does not believe an action constitutes a denial of access to services but where the Party who is the subject of the action believes the underlying action amounts to a denial of access to services.

The proposed rule change defines the circumstances under which an aggrieved Party may request a hearing under NASD Rule 9514 for the purpose of reviewing Association action concerning a purported denial of access. The NASD is proposing removal of the Association's function as gatekeeper for determining whether a Party may

request review of a denial of access. Under the proposed rule change, either the Association or the aggrieved Party (regardless of whether a notification of the limitation or prohibition is sent under NASD Rule 9513) may seek to initiate a denial of access proceeding under NASD Rule 9514. Thus, the proposed rule change would liberalize the Association's procedures for initiating denial of access hearings. In those instances where staff intends to take an action that it believes constitutes a denial of access, the staff will issue the NASD Rule 9513(a) notice.

B. Hearing Panel. The proposed rule change would expand the pool from which a Hearing Panel may be drawn for hearings requested under NASD Rule 9514 to include Hearing Officers.

C. Custodian of the Record. Under the proposed rule change, the General Counsel for the NASD would be the custodian of record in proceedings initiated under NASD Rule 2210, 2220, 9512, or 9513, except that the Office of Hearing Officers would be the custodian of record for the proceedings initiated under NASD Rule 9513(a) concerning failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation. Currently, the Code provides that if the President of NASD Regulation or NASD Regulation staff initiated the proceeding under NASD Rule 2210, 2220, 9512, or 9513, the Office of the General Counsel of NASD Regulation would be the custodian of the record, except that the Office of Hearing Officers would be the custodian of record for proceedings initiated under NASD Rule 9513(a) concerning failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation. If the President of Nasdaq or Nasdaq staff initiated the proceeding under NASD Rule 9512 or 9513, the Office of the General Counsel of Nasdaq would be the custodian of the record.

D. Replacement of NASD Rule 4800 and 9700 Series. On May 4, 1999, the Commission approved SR-NASD-98-88, which replaced the existing NASD Rule 4800 Series (NASD Rule 4810 through 4890, inclusive) with a new Code of Procedure for review of Nasdaq listing determinations.⁸ File number SR-NASD-98-88 also temporarily relocated the existing NASD Rule 4800 Series—which relates to other grievances concerning the automated systems—to the NASD Rule 9700 Series, pending submission and approval of the

subject Rule Filing on denial of access proceedings. SR-NASD-98-88 also deleted the NASD Rule 9700 Series immediately upon approval of revisions to the NASD Rule 9500 Series contained in this filing. Accordingly, upon approval of this rule filing, the NASD Rule 9700 Series will be deleted and denials of access involving Nasdaq's automated systems will be reviewed through the NASD Rule 9500 Series procedures.

(2) Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁹ 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 NASD believes that the rule change is consistent with Section 15A(b)(8)¹⁰ in that it furthers the statutory goals of providing a fair procedure for imposing prohibitions or limitations on Association services. Under the proposed rule change, the Code would be amended so as to eliminate the Association from serving as the gatekeeper for determining whether an aggrieved Party may seek a hearing to determine whether that Party has been improperly denied access to Association services, thus allowing for greater access to the protections afforded by Section 15(A)(b)(8).¹¹

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and

⁷ The Commission notes that NASD conclusions of law are not binding on the Commission.

⁸ See Securities Exchange Act Release No. 41367 (May 4, 1999), 64 FR 25942 (May 13, 1999) (Order approving File No. SR-NASD-98-88).

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ 15 U.S.C. 17o-3(b)(8).

¹¹ *Id.*

publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

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

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, 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR-NASD-99-26 and should be submitted by June 1, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-11807 Filed 5-10-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42757; File No. SR-NYSE-99-44]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to NYSE Rule 103A

May 4, 2000.

I. Introduction

On November 3, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 relating to NYSE Rule 103A. The proposed rule change was published for comment in the **Federal Register** on March 14, 2000.³ The Commission did not receive any comment letters with respect to the proposal. This order approves the Exchange's proposal.

II. Description of the Proposal

1. Purpose

The Exchange proposed to amend Rule 103A (Special Stock Reallocation) to codify the Market Performance Committee's ("MPC") authority with respect to allocation freezes, stock assignments and reassignments, specialist unit organizational changes, and Floor member qualification and continuing education requirements.

a. Allocation Freezes

Currently, Rule 103A provides the MPC the authority to establish and administer measures of specialist performance, conduct performance improvement actions when a specialist unit does not meet the performance standards in Rule 103A, and reallocate stocks if a unit does not achieve its specified goals when subject to a performance improvement action. The Exchange represented that these standards help to establish and maintain acceptable levels of specialist performance, thereby enhancing the competitiveness of the Exchange's specialist system. The purpose of a performance improvement action is to provide assistance and guidance to specialist units to enable them to enhance their performance. When a performance improvement action is initiated, a specialist unit is required to submit a performance improvement plan addressing how it intends to improve performance to the MPC. Based on the MPC's review of the performance improvement plan, the MPC has the authority to preclude a specialist unit, that is subject to a performance improvement action, from applying to be allocated any newly-listing company (an "allocation freeze") if the MPC believes such action is appropriate.

The Exchange proposed to amend Rule 103A to allow the MPC to exercise its discretion in imposing allocation freezes. In certain instances, the Committee will determine that a unit's performance is not as strong as other units' performance, although the unit's

performance fully meets the Rule 103A performance standards. For example, this may occur when a specialist unit's scores on the quarterly Specialist Performance Evaluation Questionnaire are above Rule 103A performance standards, however, the unit may have lower scores than other units over a period of several quarters, resulting in persistent lower rankings in the bottom quartile. In these instances, the Exchange believes the MPC should be able to use its professional judgment to provide incentives to specialist units to encourage them to enhance their performance. Therefore, the Exchange proposes to add to Rule 103A authority for the Committee to initiate an allocation freeze for a unit, without initiating a formal performance improvement action. The Commission expects the NYSE's MPC to exercise its discretion consistent with the purpose of the Act.

b. Receipt of New Listings During an Allocation Freeze

Under the Exchange's Allocation Policy and Procedures (the "Allocation Policy") the are circumstances when a newly-listing company may choose its specialist unit. For example, a newly-listing company that is related to an already listed company may choose to stay with the current specialist for the listed company or choose to go through the Allocation Committee.⁴ The newly-listing company may choose to stay with the current specialist for the related listed company even if such unit is under an allocation freeze imposed by the MPC as long as the unit is not subject to a performance improvement action.

Similarly, under the Allocation Policy, the newly-listing company may choose its specialist from among a group of specialist units chosen by the Allocation Committee. The Allocation Committee has the ability to exclude or include the current specialist for the related company in such a group. If the specialist unit was under an allocation freeze imposed by the MPC, it would not be precluded from being placed in the group or chosen by the newly-listing company as long as the allocation freeze was not the result of a performance improvement action.

c. Floor Member Qualification and Continuing Education

The Exchange also proposes to amend Rule 103A to make mandatory (i) participation by proposed Floor members in an Exchange-sponsored

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 34-42501 (March 7, 2000), 65 FR 13801.

⁴ See Securities Exchange Act Release No. 42487 (March 2, 2000), 65 FR 13801 (March 9, 2000).

¹² 17 CFR 200.30-3(a)(12).