

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 in Washington, D.C. Copies of such filing will also be available for inspection and copying at MBSCC's principal office. All submissions should refer to File No. SR-MBSCC-00-01 and should be submitted by July 17, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-16064 Filed 6-23-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42958; File No. SR-NASD-00-20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to Rule 2320(g) and Rule 3110(b)

June 20, 2000.

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 April 13, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as 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.

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

NASD Regulation is proposing to amend NASD Rules 2320(g) and 3110(b): (1) To require that members executing a customer order in a non-Nasdaq security contact and obtain quotations from three dealers (or all dealers if three or less) to determine the best inter-dealer market for security, unless two or more priced quotations are displayed in an inter-dealer quotation system that permits quotation updates on a real-time basis (such as the OTC Bulletin Board ("OTCBB") or the electronic pink sheets); (2) to require that members that display priced quotations for the same non-Nasdaq security in two or more quotation mediums that permit quotation updates on a real-time basis display the same priced quotations for the security in each quotation medium; (3) to eliminate the requirement that a member indicate on the order ticket for each transaction in a non-Nasdaq security the name of each broker-dealer contacted and the quotations received, if two or more priced quotations are displayed and NASD Regulation has access, on a historical basis, to the quotation data; and (4) to define the terms *inter-dealer quotation system* and *quotation medium* for the purposes of the proposed rule change.

Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

2320. Best Execution and Interpositioning

(a) through (f) No Change.

(g)(1) *Unless two or more priced quotations for a non-Nasdaq security (as defined in the Rule 6700 Series) are displayed in an inter-dealer quotation system that permits quotation updates on a real-time basis, [I]n any transaction for or with a customer pertaining to the execution of an order in a non-Nasdaq security [(as defined in the Rule 6700 Series)], a member or person associated with a member, shall contact and obtain quotations from three dealers (or all dealers if three or less) to determine the best inter-dealer market for the subject security.*

(2) *Members that display priced quotations on a real-time basis for a non-Nasdaq security in two or more quotation mediums that permit quotation updates on a real-time basis must display the same priced quotations for the security in each medium.*

(3) *For purposes of this paragraph, the term "inter-dealer quotation system"*

means any system of general circulation to brokers or dealers that regularly disseminates quotations of identified brokers or dealers.

(4) *For purposes of this paragraph, the term "quotation medium" means any inter-dealer quotation system or any publication or electronic communications network or other device that is used by brokers or dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.*

(5) Pursuant to the Rule 9600 Series, the staff, for good cause shown, after taking into consideration all relevant factors, may exempt any transaction or classes of transactions, either unconditionally or on specified terms, from any or all of the provisions of this paragraph if it determines that such exemption is consistent with the purpose of this Rule, the protection of investors, and the public interest.

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3110. Books and Records

(a) No Change

(b)(1) No Change

(b)(2) A person associated with a member shall indicate on the memorandum for each transaction in a non-Nasdaq security, as that term is defined in the Rule 6700 Series, the name of each dealer contacted and the quotations received to determine the best inter-dealer market; *however, the requirements of this subparagraph shall not apply if two or more priced quotations for the security are displayed in an inter-dealer quotation system, as defined in Rule 2320(g), that permits quotation updates on a real-time basis for which NASD Regulation has access to historical quotation information.*

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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 purposes 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. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

1. Purpose

Rule 2320(g) ("Three Quote Rule" was originally adopted on May 2, 1988³ as an amendment to the NASD's best execution interpretation. Specifically, the Three Quote Rule requires members that execute transactions in non-Nasdaq securities on behalf of customers to contact a minimum of three dealers (or all dealers if three or fewer) and obtain quotations in determining the best inter-dealer market.⁴ The intent of the Three Quote Rule is to create a standard to help ensure that members fulfill their best execution responsibilities to customers in non-Nasdaq securities, particularly in transactions involving relatively illiquid securities with non-transparent prices. The Three Quote Rule is a minimum standard, and compliance with the rule, in and of itself, does not mean a member has met its best execution obligations. Best execution requires each member to use reasonable diligence to ascertain the best inter-dealer market for a security, and to buy or sell in that market so that the resultant price to the customer is as favorable as possible under prevailing market conditions.⁵

Since the adoption of the Three Quote Rule, the market for non-Nasdaq securities has changed dramatically. For example, from 1996 to 1999, the OTCBB experienced growth of 72 percent in market maker positions, 421 percent in average daily share volume, and 65 percent in average daily dollar volume.

Given the rapid growth in the market for non-Nasdaq securities, NASD Regulation believes that the current Three Quote Rule often hinders, rather than furthers, investor protection by causing significant delays in obtaining executions of customer orders. The costs associated with delayed executions resulting from compliance with the Three Quote Rule are not outweighed by the benefits of obtaining three telephone quotes. Indeed, NASD Regulation believes that the informational value of three telephone quotes is significantly less than the informational value of two transparent, firm quotes in terms of obtaining best execution for customers.

Therefore, NASD Regulation is proposing that Rule 2320(g) be amended to require members to obtain quotations from three dealers (or all dealers if three or less) only when there are fewer than two priced quotations displayed in an inter-dealer quotation system that permits quotation updates on a real-time basis (such as the OTCBB or the electronic pink sheets). The proposed rule change defines the term *inter-dealer quotation system* as any system of general circulation to brokers or dealers that regularly disseminates quotations of identified brokers or dealers.

NASD Regulation believes the proposed rule change would enhance investor protection by reducing execution delays, while improving the quality of information relied upon by firms in seeking to obtain best execution. As with the current rule, the proposed rule change would not limit or change a member's general best execution obligations.

The proposed rule change also would require members that display priced quotations for the same security in two or more quotation mediums that permit quotation updates on a real-time basis to display the same priced quotations in each system. The proposed rule change defines the term *quotation medium* as any inter-dealer quotation system or any publication or electronic communications network or other device that is used by brokers or dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.

NASD Regulation believes that members' displaying different priced quotations in different quotation mediums for the same security can be confusing and misleading to other market participants and, more importantly, to public investors. Moreover, requiring that members display consistent priced quotations in multiple quotation mediums would enhance the ability of other market participants to ascertain the best inter-dealer market for a security.

In addition, Rule 3110(b)(2) currently requires that members indicate on the order ticket for each transaction in a non-Nasdaq security the name of each dealer contacted and the quotations received to determine the best inter-dealer market. Under the proposed rule change, members would not be required to note such information on the order ticket if two or more priced quotations are displayed and NASD Regulations has access to the quotation data. As a result, the proposed rule change would alleviate certain recordkeeping burdens

for members where NASD Regulation can validate and confirm compliance with applicable requirements directly through its internal historical data. Currently, NASD Regulation has such data with respect to the OTCBB securities, although it does not have access to historical quotation data for the electronic pink sheets.⁶

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act⁷ 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. The NASD believes that the proposed rule change would reduce the time and effort necessary in contacting three market makers when there are at least two priced quotations displayed, while potentially enabling members to provide customers better executions in non-Nasdaq securities than is provided under existing requirements.

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

NASD Regulation does not believe that the proposed rule change would result in 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

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 publishes its reasons for so finding, or (ii) as to which the NASD 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.

³ See Exchange Act Release No. 25637 (May 2, 1988), 53 FR 16488 (May 9, 1988).

⁴ Currently, if three firm quotations are displayed, a broker-dealer is not required to call the three market makers to verify the firm quotations that are displayed on the screen. A broker-dealer need note on the order ticket only the identity of the broker-dealers and the firm quotations displayed.

⁵ See NASD Rule 2320(a).

⁶ NASD Regulation currently is soliciting comment on a rule proposal that would require members to record and report their quotation data in the electronic pink sheets or similar quotation systems to NASD Regulations. See NASD Notice to Members 00-17 (Mar. 2000).

⁷ 15 U.S.C. 78o-3(b)(6).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule 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 and copying at the principal office of the NASD. All submissions should refer to the File No. SR-NASD-00-20 and should be submitted by July 17, 2000.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 00-16063 Filed 6-23-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42954; File No. SR-NYSE-100-8]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to the Exchange's Pride-Based Continued Listing Standards

June 19, 2000.

Pursuant to Section 19(b)(12) of the Securities Exchange Act¹ of 1934 ("Act"), and Rule 19b-4 thereunder,² notice is hereby given that on February 22, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, and II below, which Items have been prepared by the Exchange. On May 3, 2000, the Exchange

submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the proposed rule change and Amendment No. 1.

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

The proposed rule change consists of an amendment to Section 802.01C of the *Listed Company Manual* ("Manual") of the Exchange and corresponding changes to NYSE Rule 499. The text of the proposed rule change, as amended, is as follows. New text is *italicized*.

NYSE Listed Company Manual

Section 8

Suspension and Delisting

801.00 Policy

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802.00 Continued Listing

802.01 Continued Listing Criteria

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802.01C. Price Criteria

Average closing price of a security is less than \$1.00 over a consecutive 30-trading-day period (D).

(D) Once notified, the company must bring its average share price back above \$1.00 by the later of its subsequent annual meeting date or six months following receipt of the notification. If this is the only criteria that makes the company below the Exchange's continued listing standards, the procedures outlined in Paras. 802.20 and 802.03 do not apply. The company must, however, notify the Exchange, within 10 business days of receipt of the notification, of its intent to cure this deficiency or be subject to suspension and delisting procedures. In the event that at the expiration of the cure period, a \$1.00 average share price over the preceding 30 trading days is not attained, the Exchange will commence suspension and delisting procedures. Notwithstanding the foregoing, if the subject security *is not the primary trading common stock of the company (e.g., a tracking stock or a preferred class) or is a stock listed under the Affiliated Company standard where the parent remains in "control" as that term*

is used in that standard, the Exchange may determine whether to apply the Price Criteria to such security after evaluating the financial status of the company and/or the parent/affiliated company, as the case may be.

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NYSE Rules

Delisting of Securities

Suspension From Dealings or Removal From List by Action of the Exchange

The aim of the New York Stock Exchange is to provide the foremost auction market for securities of well-established companies in which there is a broad public interest and ownership. Rule 499.

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.20 NUMERICAL AND OTHER CRITERIA—WHEN A COMPANY FALLS BELOW ANY OF THESE CRITERIA, THE EXCHANGE MAY GIVE CONSIDERATION TO ANY DEFINITIVE ACTION THAT A COMPANY WOULD PROPOSE TO TAKE THAT WOULD BRING IT ABOVE CONTINUED LISTING STANDARDS.

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9. Average closing price of a security is less than \$1.00 over a consecutive 30 trading-day period. Once notified, the company must bring its average share price back above \$1.00 by the later of its subsequent annual meeting date or six months following receipt of the notification. If this is the only criteria that makes the company below the Exchange's continued listing standards, the procedures outlined in Paras. .50 and .60 of this Rule 499 do not apply. The company must, however notify the Exchange, within 10 business days of receipt of the notification, of its intent to cure this deficiency. In the event that at the expiration of the cure period, a \$1.00 average share price over the preceding 30 trading days is not attained, the Exchange will commence suspension and delisting procedures. *Notwithstanding the foregoing, if the subject security is not the primary trading common stock of the company (e.g., a tracking stock or a preferred class) or is a stock listed under the Affiliated Company standard where the parent remains in "control" as that term is used in that standard, the Exchange may determine whether to apply the Price Criteria to such security after evaluating the financial status of the company and/or the parent/affiliated company, as the case may be.*¹

³ In Amendment No. 1, the NYSE made technical changes to the proposed rule text. See letter from Daniel P. Odell, Assistant Secretary, NYSE, to Nancy dSanow, Senior Special Counsel, Division of Market Regulation, SEC, dated May 1, 2000 ("Amendment No. 1").

⁴ When the Exchange amended Section 802.01C of the Manual in SR-NYSE-00-12, the Exchange did not amend NYSE Rule 499 to reflect the

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.