

participants fund be issued by an approved letter of credit other than the participant or an affiliate of the participant.<sup>4</sup>

## II. Discussion

Section 17A(b)(3)(F)<sup>5</sup> of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. As set forth below, the Commission believes that MBSCC's rule change is consistent with this obligation.

Letters of credit are used at MBSCC and at other clearing agencies as collateral to meet clearing fund obligations. MBSCC's clearing fund is intended to provide liquidity and protection to MBSCC and its members in the event a MBSCC member defaults on its obligation. If a member were allowed to issue a letter of credit to itself (or an affiliate of the member to the member), the letter of credit would probably not be honored in a default situation.

Because the rule change will prohibit a participant from providing a letter of credit for itself or from an affiliated entity, the rule change helps ensure that MBSCC can draw upon a letter of credit used as clearing fund collateral if MBSCC ever had the need to do so. This should assist MBSCC in safeguarding securities and funds in its possession or control or for which it is responsible.

## III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-MBSCC-00-01) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>4</sup> The proposed rule change also makes a technical modification to Article III, Rule 5 of MBSCC's Rules to correct the reference contained within such rule from "Rule 4" to "Rule 5."

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>6</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43533; File No. SR-NASD-00-63]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Amending NASD Rule 4611 Relating to Registration As a Nasdaq Market Maker in a Security

November 8, 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 20, 2000, the National Association of Securities Dealers, Inc. ("NASD"), 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 Nasdaq. Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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

Nasdaq is proposing to amend NASD Rule 4611 to allow an application for registration as a market maker in a security to become effective on the same day the application is filed. Nasdaq is also proposing a corresponding technical change to Rule 4720 regarding SOES Participation Registration. Below is the text of the proposed rule change; proposed deletions are in brackets and proposed additions are underlined.

4611. Registration as a Nasdaq Market Maker

\*(\*)\*(\*)\*(\*)\*(\*)  
[(c) A Nasdaq market maker may become registered in a newly authorized issued by contacting Nasdaq Market Operations. If registration is requested within five (5) business days after the issue is authorized, registration shall become effective at the time the registration request is entered.]

[(d)] (c) A Nasdaq market maker may become registered in an issue [already

included in Nasdaq] by entering a registration request via a Nasdaq terminal or other Nasdaq approved electronic interface with Nasdaq's system or by contacting Nasdaq Market Operations. If [registration is requested in an issue that has been included in Nasdaq for more than five (5) days, and] the requirements of paragraph (b) above are satisfied, registration shall become effective on the day [after] the registration request is entered. [Provided, however, that same day registration is permissible for:

(1) a Nasdaq market maker, registered in a security that is the subject of a publicly announced merger or acquisition offer with another Nasdaq issue, who seeks registration in the other merger or acquisition issue; and

(2) a manager or co-manager of an underwriting syndicate for a secondary offering of a security on the day of the secondary offering of that security.]

[(e)] (d) A Nasdaq market maker's registration in an issue shall be terminated by the Association if the market maker fails to enter quotations in the issue within five (5) business days after the market maker's registration in the issue becomes effective.

[(f)](e) Unless otherwise specified by the Association, each Nasdaq market maker that is registered as a market maker in a Nasdaq National Market security shall also at all times be registered as a market maker in the Small Order Execution System (SOES) with respect to that security and be subject to the SOES Rules as set forth in the Rule 4700 Series.

[(g)](f) In cases where a market making member has more than one trading location, a fifth character geographic indicator shall be appended to the market marker's identifier for that security to identify the branch location where the security is traded. The fifth-character branch indicators are established by the Association and published from time to time in the Nasdaq/CQS symbol directory.

4720. SOES Participant Registration

\*(\*)\*(\*)\*(\*)\*(\*)  
(b) Pursuant to Rule 4611[(f)], participation as a SOES Market Maker is required for any Nasdaq market maker registered to make a market in an NNM security.

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

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

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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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*

Presently, NASD Rule 4611 states that a request to become registered as a market maker in a security that has been trading on Nasdaq for more than five (5) days is effective on the day following the request. If a security has been trading on Nasdaq for five days or less, the market maker's request becomes effective immediately. In contrast, market makers utilizing Electronic Communication Networks/Alternative Trading Systems ("ECNs/ATSs") may immediately upon request begin displaying quotes/orders for any security trading on Nasdaq, regardless of how long the security has been trading. To eliminate the disparate treatment of market makers, Nasdaq is proposing to allow market makers to begin trading in an issue on the same day they apply for registration.

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act<sup>5</sup> in that it is designed to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. In addition, the proposal is not designed to permit unfair discrimination between brokers and dealers, but instead is designed to eliminate the disparate treatment of market makers.

Nasdaq also believes the proposed rule change is consistent with Section 11A of the Act.<sup>6</sup> Section 11A set forth Congress's findings that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure, among other things, fair competition among brokers and dealers. The proposal is consistent with this goal because it will allow market makers to begin quoting in a security in the same timeframe as that which is applicable to ECNs/ATSs.

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

Nasdaq 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**

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act,<sup>7</sup> and Rule 19b-4(f)(6)<sup>8</sup> thereunder because the proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and does not become operative for 30 days from the date on which the proposed rule change was filed, or such shorter time as the Commission may designate. The proposal is designed to eliminate the disparate treatment of market makers in that the proposal is designed to eliminate the disparate treatment of market makers and will permit both market makers and those utilizing ECNs/ATSs to begin trading in an issue on the same day they apply for registration.

In addition, Nasdaq provided the Commission with written notice of its intent to file this proposed rule change, and the written notice included a description of the proposal and the text of the proposed rule change. Nasdaq also requested that the Commission accelerate the operative date.<sup>9</sup> The Commission believes that the proposal is consistent with the protection of investors and the public interest and finds good cause to designate the proposal immediately operative upon filing. At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act,<sup>10</sup> the Commission may summarily abrogate the 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 purposes of the Act.

<sup>7</sup> 5 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 204.19b-4(f)(6).

<sup>9</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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. 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 number in the caption above and should be submitted by December 7, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SOCIAL SECURITY ADMINISTRATION**

**Privacy Act of 1974 as Amended; Computer Matching Program (SSA) Internal Revenue Service (IRS) Match Number 1016**

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice of Computer Matching Program.

**SUMMARY:** In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct with IRS.

**DATES:** SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

**ADDRESSES:** Interested parties may comment on this notice by either telefax to (410) 966-2935 or writing to the Associate Commissioner, Office of

<sup>5</sup> 15 U.S.C. 780-3(b)(6).

<sup>6</sup> 15 U.S.C. 78k-1.