

telephone (including voicemail). However, in cases where an officer nullifies or modifies a large number of transactions pursuant to Nasdaq's authority to act on its own motion, individual notice may not be practicable. In that case, Nasdaq may provide notice to market participants via the Nasdaq Workstation II Service, a press release, or any other method reasonably expected to provide rapid notice to many market participants.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,⁸ in general and with section 15A(b)(6) of the Act,⁹ in particular, in that it promotes just and equitable principles of trade and protects investors and the public interest. Nasdaq believes that the proposed rule change will promote the fair and efficient resolution of disputes involving clearly erroneous transactions and will clarify Nasdaq's authority to review transactions on its own motion. Accordingly, Nasdaq believes that the proposed rule change will lessen the impact of erroneous transactions on the public by allowing Nasdaq to correct erroneous transactions quickly and by defining more clearly the scope of Nasdaq's authority.

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.

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

No written comments were solicited or received with respect to the proposed rule change.

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 Nasdaq 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, as amended, 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 filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2002-127 and should be submitted by December 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-31019 Filed 12-6-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46940; File No. SR-NASD-2002-89]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend Nasdaq's Listing Standards Pertaining to American Depositary Receipts, Preferred and Secondary Classes of Stock, Bid Price Compliance and Monitoring Periods, Categories of Securities Eligible for Initial Inclusion on Nasdaq, and the Market Capitalization Compliance Period

December 3, 2002.

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 January 7, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its 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. On November 1, 2002, NASD filed Amendment No. 1 to the proposed rule change.³ On December 2, 2002, NASD filed Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Nasdaq is proposing to modify Nasdaq's listing standards pertaining to American Depositary Receipts, preferred and secondary classes of stock, bid price compliance and monitoring periods, categories of securities eligible for initial inclusion on Nasdaq, and the market capitalization compliance period. Below is the text of the proposed rule change. Proposed new language is in *italic*; proposed 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)-(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)-(3) No change.

(4) For initial inclusion, [common or preferred stock] *common stock, preferred stock and secondary classes of common stock* shall have a minimum bid price of \$4 per share. For continued inclusion, the minimum bid price shall be \$1 per share.

(5) No change

(6)(A) In the case of common stock, there shall be at least 300 round lot holders of the security. [An account of a member that is beneficially owned by

³ See letter from John Nachmann, Senior Attorney, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated November 1, 2002.

⁴ See letter from John Nachmann, Senior Attorney, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated December 2, 2002.

⁸ 15 U.S.C. 78o-3.

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

a customer (as defined in Rule 0120) will be considered a holder of a security upon appropriate verification by a member.]

(B) *In the case of preferred stock and secondary classes of common stock, there shall be at least 100 round lot holders of the security, provided in each case that the issuer's common stock or common stock equivalent equity security is traded on either Nasdaq or a national securities exchange. In the event the issuer's common stock or common stock equivalent security is not traded on either Nasdaq or a national securities exchange, the preferred stock and/or secondary class of common stock may be traded on Nasdaq so long as the security satisfies the listing criteria for common stock.*

(C) *An account of a member that is beneficially owned by a customer (as defined in Rule 0120) will be considered a holder of a security upon appropriate verification by a member.*

(7)(A) *In the case of common stock, there shall be at least 1,000,000 publicly held shares for initial inclusion and 500,000 publicly held shares for continued inclusion. For initial inclusion such shares shall have a market value of at least \$5 million. For continued inclusion such shares shall have a market value of at least \$1 million. [Shares held directly or indirectly by any officer or director of the issuer and by any person who is the beneficial owner of more than 10 percent of the total shares outstanding are not considered to be publicly held.]*

(B) *In the case of preferred stock and secondary classes of common stock, there shall be at least 200,000 publicly held shares having a market value of at least \$2 million for initial inclusion and 100,000 publicly held shares having a market value of \$500,000 for continued inclusion. In addition, the issuer's common stock or common stock equivalent security must be traded on either Nasdaq or a national securities exchange. In the event the issuer's common stock or common stock equivalent security is not traded on either Nasdaq or a national securities exchange, the preferred stock and/or secondary class of common stock may be traded on Nasdaq so long as the security satisfies the listing criteria for common stock.*

(C) *Shares held directly or indirectly by any officer or director of the issuer and by any person who is the beneficial owner of more than 10 percent of the total shares outstanding are not considered to be publicly held.*

(8)(A)–(D) No change

(E) *Nasdaq may, in its discretion, require an issuer to maintain a bid price*

of at least \$1.00 per share for a period in excess of ten consecutive business days, but generally no more than 20 consecutive business days, before determining that the issuer has demonstrated an ability to maintain long-term compliance. In determining whether to monitor bid price beyond ten business days, Nasdaq will consider the following four factors: (i) margin of compliance (the amount by which the price is above the \$1.00 minimum standard); (ii) trading volume (a lack of trading volume may indicate a lack of bona fide market interest in the security at the posted bid price); (iii) the market maker montage (the number of market makers quoting at or above \$1.00 and the size of their quotes); and, (iv) the trend of the stock price (is it up or down).

(9)–(29) No change

(d) No change

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 (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 set out in this subsection for inclusion in Nasdaq.[:] In the case of ADRs, the underlying security will be considered when determining the ADR's qualification for initial or continued inclusion on Nasdaq.*

(1)–(2)(D) No change.

(E) *In the case of ADRs, the underlying security will be considered when determining the ADR's qualification for initial or continued inclusion on Nasdaq.]*

(3) No change.

(4)(A) *[In the case of foreign shares, t] There shall be at least 300 round lot holders of the security. [An account of a member that is beneficially owned by a customer (as defined in Rule 0120) will be considered a holder of a security upon appropriate verification by the member.]*

(B) *In the case of preferred stock and secondary classes of common stock, there shall be at least 100 round lot holders of the security, provided in each case that the issuer's common stock or common stock equivalent equity security is traded on either Nasdaq or a national securities exchange. In the event the issuer's common stock or*

common stock equivalent security is not traded on either Nasdaq or a national securities exchange, the preferred stock and/or secondary class of common stock may be traded on Nasdaq so long as the security satisfies the listing criteria for common stock.

(C) *An account of a member that is beneficially owned by a customer (as defined in Rule 0120) will be considered a holder of a security upon appropriate verification by the member.*

(5) *[In the case of foreign shares, t] There shall be at least 1,000,000 publicly held shares for initial inclusion and 500,000 publicly held shares for continued inclusion. In the case of preferred stock and secondary classes of common stock, there shall be at least 200,000 publicly held shares for initial inclusion and 100,000 publicly held shares for continued inclusion. In addition, the issuer's common stock or common stock equivalent security must be traded on either Nasdaq or a national securities exchange. In the event the issuer's common stock or common stock equivalent security is not traded on either Nasdaq or a national securities exchange, the preferred stock and/or secondary class of common stock may be included in Nasdaq so long as the security satisfies the listing criteria for common stock. Shares held directly or indirectly by any officer or director of the issuer and by any person who is the beneficial owner of more than 10 percent of the total shares outstanding are not considered publicly held.*

(6) *In the case of rights, warrants and ADR[']s for initial inclusion only, at least 100,000 shall be issued. Issuers of ADRs must also meet the round lot holders and publicly held shares requirements set forth in subsections (4) and (5) above.*

(7)–(25) No change.

(f) No change

* * * * *

4420. Quantitative Designation Criteria

In order to be designated for the Nasdaq National Market, an issuer shall be required to substantially meet the criteria set forth in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i)₂, [or] (j) or (k) below. Initial Public Offerings substantially meeting such criteria are eligible for immediate inclusion in the Nasdaq National Market upon prior application and with the written consent of the managing underwriter that immediate inclusion is desired. All other qualifying issues, excepting special situations, are included on the next inclusion date established by Nasdaq.

(a) *Entry Standard 1—First Class of Common Stock, Shares or Certificates of*

Beneficial Interest of Trusts, Limited Partnership Interests in Foreign or Domestic Issues and American Depositary Receipts

(1)–(7) No change

(b) Entry Standard 2—*First Class of Common Stock, Shares or Certificates of Beneficial Interest of Trusts, Limited Partnership Interests in Foreign or Domestic Issues and American Depositary Receipts*

(1)–(7) No change

(c) Entry Standard 3—*First Class of Common Stock, Shares or Certificates of Beneficial Interest of Trusts, Limited Partnership Interests in Foreign or Domestic Issues and American Depositary Receipts*

(1)–(6) No change

(d)–(j) No change

(k) *Quantitative Designation Criteria—Preferred Stock and Secondary Classes of Common Stock*

For initial inclusion, if the common stock or common stock equity equivalent security of the issuer is listed on Nasdaq or a national securities exchange, the issue shall have:

(1) At least 200,000 publicly held shares;

(2) A market value of publicly held shares of at least \$4,000,000;

(3) A minimum bid price per share of \$5;

(4) A minimum of 100 round lot shareholders;

(5) At least three registered and active market makers.

Alternatively, in the event the issuer's common stock or common stock equivalent security is not traded on either Nasdaq or a national securities exchange, the preferred stock and/or secondary class of common stock may be traded on Nasdaq so long as the security satisfies the listing criteria for common stock.

* * * * *

4450. Quantitative Maintenance Criteria

After designation as a Nasdaq National Market security, a security must substantially meet the criteria set forth in paragraphs (a) or (b), and (c), (d), (e), [and] (f), (g) (h) or (i) below to continue to be designated as a national market system security. A security maintaining its designation under paragraph (b) need not also be in compliance with the quantitative maintenance criteria in the Rule 4300 series.

(a) Maintenance Standard 1—*First Class of Common Stock, [Preferred Stock,] Shares or Certificates of Beneficial Interest of Trusts, [and] Limited Partnership Interests in Foreign*

or Domestic Issues and American Depositary Receipts

(1)–(6) No change

(b) Maintenance Standard 2—*First Class of Common Stock, [Preferred Stock,] Shares or Certificates of Beneficial Interest of Trusts, [and] Limited Partnership Interests in Foreign or Domestic Issues and American Depositary Receipts*

(1)–(6) No change

(c)–(d) No change

(e) Compliance Periods

(1) No change

(2) *For issuers subject to the \$1 bid price requirement under Maintenance Standard 1 or the \$3 bid price requirement under Maintenance Standard 2, a [A] failure to meet the continued inclusion requirement for minimum bid price shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 90 calendar days from such notification to achieve compliance. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 90 day compliance period. Nasdaq may, in its discretion, require an issuer under Maintenance Standard 1 to maintain a bid price of at least \$1.00 per share for a period in excess of ten consecutive business days, but generally no more than 20 consecutive business days, before determining that the issuer has demonstrated an ability to maintain long-term compliance. In determining whether to monitor bid price beyond ten business days, Nasdaq will consider the following four factors: (i) margin of compliance (the amount by which the price is above the \$1.00 minimum standard); (ii) trading volume (a lack of bona fide market interest in the security at the posted bid price); (iii) the market maker montage (the number of market makers quoting at or above \$1.00 and the size of their quotes); and, (iv) the trend of the stock price (is it up or down). [If the issuer has not been deemed in compliance prior to the expiration of the 90 day compliance period, it may transfer to The Nasdaq SmallCap Market, provided that it meets all applicable requirements for continued inclusion on the SmallCap Market set forth in Rule 4310(c) (other than the minimum bid price requirement of Rule 4310(c)(4)) or Rule 4320(e), as applicable. A Nasdaq National Market issuer transferring to The Nasdaq SmallCap Market must pay the entry fee set forth in Rule 4520(a). Upon such transfer, a domestic or Canadian Nasdaq National Market*

issuer transferring to The Nasdaq SmallCap Market will be afforded the remainder of the initial 180 day compliance period set forth in Rule 4310(c)(8)(D) and may thereafter be eligible for the subsequent 180 day compliance period pursuant to that rule. The issuer may also request a hearing to remain on The Nasdaq National Market pursuant to the Rule 4800 Series. The 90-day grace period afforded by this rule and any time spent in the hearing process will be deducted from the applicable grace periods on The Nasdaq SmallCap Market. Non-Canadian foreign issuers that transfer to The Nasdaq SmallCap Market are not subject to the \$1 minimum bid price requirement pursuant to Rule 4320. Any issuer (including a non-Canadian foreign issuer) that was formerly listed on The Nasdaq National Market, and which transferred to The Nasdaq SmallCap Market pursuant to this paragraph, may transfer back to The Nasdaq National Market without satisfying the initial inclusion criteria if it maintains compliance with the \$1 bid price requirement for a minimum of 30 consecutive business days prior to the expiration of the compliance periods described in Rule 4310(c)(8)(D) and if it has continually maintained compliance with all other requirements for continued listing on The Nasdaq National Market since being transferred. Such an issuer is not required to pay the entry fee set forth in Rule 4510(a) upon transferring back to The Nasdaq National Market.]

(3) No change

(4) *A failure to meet the continued inclusion requirements for market capitalization shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance with the applicable continued inclusion standard. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 30 day compliance period.*

(f)–(g) No change

(h) *Quantitative Maintenance Criteria—Preferred Stock and Secondary Classes of Common Stock*

For continued inclusion, if the common stock or common stock equity equivalent security of the issuer is listed on Nasdaq or a national securities exchange, the issue shall have:

(1) At least 100,000 publicly held shares;

(2) A market value of publicly held shares of at least \$1,000,000;

issuer transferring to The Nasdaq SmallCap Market will be afforded the remainder of the initial 180 day compliance period set forth in Rule 4310(c)(8)(D) and may thereafter be eligible for the subsequent 180 day compliance period pursuant to that rule. The issuer may also request a hearing to remain on The Nasdaq National Market pursuant to the Rule 4800 Series. The 90-day grace period afforded by this rule and any time spent in the hearing process will be deducted from the applicable grace periods on The Nasdaq SmallCap Market. Non-Canadian foreign issuers that transfer to The Nasdaq SmallCap Market are not subject to the \$1 minimum bid price requirement pursuant to Rule 4320. Any issuer (including a non-Canadian foreign issuer) that was formerly listed on The Nasdaq National Market, and which transferred to The Nasdaq SmallCap Market pursuant to this paragraph, may transfer back to The Nasdaq National Market without satisfying the initial inclusion criteria if it maintains compliance with the \$1 bid price requirement for a minimum of 30 consecutive business days prior to the expiration of the compliance periods described in Rule 4310(c)(8)(D) and if it has continually maintained compliance with all other requirements for continued listing on The Nasdaq National Market since being transferred. Such an issuer is not required to pay the entry fee set forth in Rule 4510(a) upon transferring back to The Nasdaq National Market.]

(3) No change

(4) *A failure to meet the continued inclusion requirements for market capitalization shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance with the applicable continued inclusion standard. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 30 day compliance period.*

(f)–(g) No change

(h) *Quantitative Maintenance Criteria—Preferred Stock and Secondary Classes of Common Stock*

For continued inclusion, if the common stock or common stock equity equivalent security of the issuer is listed on Nasdaq or a national securities exchange, the issue shall have:

(1) At least 100,000 publicly held shares;

(2) A market value of publicly held shares of at least \$1,000,000;

(3) A minimum bid price per share of \$1;

(4) A minimum of 100 round lot shareholders;

(5) At least two registered and active market makers.

Alternatively, in the event the issuer's common stock or common stock equivalent security is not traded on either Nasdaq or a national securities exchange, the preferred stock and/or secondary class of common stock may be traded on Nasdaq so long as the security satisfies the listing criteria for common stock.

(i) Transfers between The Nasdaq National and SmallCap Markets For Bid Price Deficient Issuers

(1) If a National Market issuer has not been deemed in compliance prior to the expiration of the 90 day compliance period for bid price, it may transfer to The Nasdaq SmallCap Market, provided that it meets all applicable requirements for continued inclusion on the SmallCap Market set forth in Rule 4310(c) (other than the minimum bid price requirement of Rule 4310(c)(4)) or Rule 4320(e), as applicable. A Nasdaq National Market issuer transferring to The Nasdaq SmallCap Market must pay the entry fee set forth in Rule 4520(a). The issuer may also request a hearing to remain on The Nasdaq National Market pursuant to the Rule 4800 Series.

(2) Following a transfer to The Nasdaq SmallCap Market pursuant to paragraph (1), a domestic or Canadian Nasdaq National Market issuer under Maintenance Standard 1 will be afforded the remainder of the initial 180 day compliance period set forth in Rule 4310(c)(8)(D) and may thereafter be eligible for the subsequent 180 day compliance period pursuant to that rule. The 90 day grace period afforded by this rule and any time spent in the hearing process will be deducted from the applicable grace periods on The Nasdaq SmallCap Market. Any issuer that was formerly listed on The Nasdaq National Market, and which transferred to The Nasdaq SmallCap Market pursuant to this paragraph, may transfer back to The Nasdaq National Market without satisfying the initial inclusion criteria if it maintains compliance with the \$1 bid price requirement for a minimum of 30 consecutive business days prior to the expiration of the compliance periods described in Rule 4310(c)(8)(D) and if it has continually maintained compliance with all other requirements for continued listing on The Nasdaq National Market since being transferred. An issuer qualifying for such a transfer pursuant to the maintenance requirements is not required to pay the

entry fee set forth in Rule 4510(a) upon transferring back to The Nasdaq National Market.

(3) Following a transfer to The Nasdaq SmallCap Market pursuant to paragraph (1), an issuer formerly qualifying for listing on The Nasdaq National Market under Maintenance Standard 2 or a non-Canadian foreign issuer, which is not subject to the \$1 bid price requirement, may transfer back to The Nasdaq National Market without satisfying the initial inclusion criteria if it maintains compliance with the applicable bid price requirement for continued listing on The Nasdaq National Market for a minimum of 30 consecutive business days within 360 days following the notification of the initial bid price deficiency, and if it has continually maintained compliance with all other requirements for continued listing on The Nasdaq National Market since being transferred. An issuer qualifying for such a transfer pursuant to the maintenance requirements is not required to pay the entry fee set forth in Rule 4510(a) upon transferring back to The Nasdaq National Market.

* * * * *

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 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. NASD 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

The purpose of the proposed rule change is to amend Nasdaq's listing standards pertaining to American Depositary Receipts, preferred and secondary classes of stock, bid price compliance and monitoring periods, types of securities eligible for initial inclusion on Nasdaq, and the market capitalization compliance period.

a. Standards for Preferred Stock and Secondary Classes of Common Stock

Nasdaq proposes to establish listing standards pertaining to round lot shareholders, publicly held shares and market value of publicly held shares for

preferred stock and secondary classes of common stock. Currently, Nasdaq listing standards do not distinguish between common stock and preferred stock or secondary classes of common stock for purposes of these requirements. Nasdaq believes that it is appropriate to establish separate liquidity standards for preferred and secondary classes of common stock as these securities are generally not as widely held nor as liquid as primary classes of common stock.⁵

The new National Market listing standards would require 100 round lot shareholders; 200,000 publicly held shares; and \$4,000,000 in market value of publicly held shares for initial inclusion, and 100 round lot shareholders; 100,000 publicly held shares; and \$1,000,000 in market value of publicly held shares for continued inclusion. The round lot shareholders and publicly held shares listing requirements would be the same for the SmallCap Market; however, the market value of publicly held shares requirement would be \$2,000,000 and \$500,000 for initial and continued inclusion, respectively.

Preferred stock or secondary classes of common stock would be included under the proposed new standards only if the issuer's common stock or common stock equivalent is traded on either Nasdaq or a national securities exchange. In situations where an issuer's common stock or common stock equivalent is not traded on either Nasdaq or a national securities exchange, the preferred stock or secondary class of common stock would need to meet the initial inclusion listing standards pertaining to common stock.

b. Transfer of Maintenance Standard 2 Issuers to the National Market

Nasdaq Rule 4450(e)(2) currently allows a National Market issuer that has transferred to the SmallCap Market to transfer back to the National Market pursuant to the National Market maintenance criteria provided it meets certain conditions, including compliance with the \$1.00 bid price requirement for a minimum of 30 consecutive business days prior to the expiration of the compliance periods set forth in Rule 4310(c)(8)(D). In effect, current Rule 4450(e)(2) only applies to National Market issuers that qualify for continued listing under Maintenance Standard 1. In contrast, National Market issuers that qualify for continued listing

⁵ The New York Stock Exchange ("NYSE") and the American Stock Exchange ("AMEX") also have separate listing standards for preferred stock. See NYSE Listed Company Manual, Section 703.05; Amex Listing Standards, Policies and Requirements, Section 103.

under Maintenance Standard 2⁶ must maintain a minimum bid price of at least \$3.00. Thus, while a Maintenance Standard 2 issuer with a bid price between \$1.00 and \$2.99 would be eligible to transfer to the SmallCap Market, it would not be eligible for the compliance period set forth in Rule 4310(c)(8)(D), and, by implication, would not be eligible to transfer back to the National Market without satisfying the initial inclusion criteria.

In order to eliminate the disparate treatment between Maintenance Standard 1⁷ and Maintenance Standard 2 issuers, Nasdaq proposes to provide Maintenance Standard 2 issuers the same compliance period and ability to transfer back to the National Market based on the Standard 2 maintenance criteria (including the \$3 minimum bid price) as is currently provided for Maintenance Standard 1 issuers.

c. Clarification of the Bid Price Monitoring Period

The majority of companies listed on Nasdaq are required to maintain a \$1.00 minimum bid price for continued inclusion although, as noted above, National Market companies listed under Maintenance Standard 2 are required to maintain a bid price of at least \$3.00. In accordance with Rules 4310(c)(8)(D) and 4450(e)(2), once an issuer's bid price falls below the applicable standard for 30 consecutive business days, the issuer is automatically afforded a grace period in which to regain compliance. These rules further provide that compliance with the bid price requirement can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the compliance period. The rules currently do not differentiate between companies that must maintain a bid price of at least \$1.00 and those that must maintain a \$3.00 minimum bid price.

Nasdaq proposes to amend the bid price rule for Maintenance Standard 2 issuers to clearly indicate that the monitoring period will be limited to ten business days. This proposal is based upon Nasdaq's belief that trading in the securities of Maintenance Standard 2 companies is less subject to market manipulation than the trading in the securities of Maintenance Standard 1 issuers. Therefore, Nasdaq believes that a ten-day monitoring period for Maintenance Standard 2 issuers is sufficient to determine the compliance status of these issuers.

Nasdaq further proposes to amend its bid price rules to set forth the following factors that will be considered when

determining whether to monitor the bid price beyond 10 business days for those issuers that must maintain a minimum \$1.00 bid price: (i) The margin of compliance (the amount by which the price is above the \$1.00 minimum standard); (ii) the trading volume (a lack of trading volume may indicate a lack of bona fide market interest in the security at the posted bid price); (iii) the market maker montage (the number of market makers quoting at or above \$1.00 and the size of their quotes); and, (iv) the trend of the stock price (is it up or down). Generally, Nasdaq will not monitor an issuer's bid price for more than 20 consecutive business days.⁸

d. Clarification of the Securities that are Eligible for Initial Inclusion on the National Market

The requirements for continued listing on the National Market, as set forth in Rules 4450(a) and (b), list the specific types of securities that are eligible for continued inclusion, specifically, common stock, preferred stock, shares or certificates of beneficial interest of trusts and limited partnership interests in foreign or domestic issues. The requirements for initial inclusion on the National Market, as set forth in Marketplace Rules 4420(a), (b) and (c), however, do not cite the specific types of securities subject to the rule. Accordingly, Nasdaq proposes to amend Rules 4420(a), (b) and (c) in order to specify that these rules apply to the same securities as those cited in Rules 4450(a) and (b). To provide greater transparency, Nasdaq also proposes to amend the initial and continued inclusion requirements to indicate that American Depositary Receipts are also eligible for inclusion on the National Market.

e. Market Capitalization Compliance Standard for the National Market

To provide greater transparency, Nasdaq proposes to amend Rule 4450(e), which sets forth the compliance periods for National Market issuers, to include a compliance period for the market capitalization listing standard. The text of the proposed rule is identical to the standard currently set forth in Rule 4310(c)(8)(C).

f. American Depositary Receipts

Nasdaq proposes to clarify that ADRs must meet the publicly held shares and round lot holders requirements set forth in Rules 4320(e)(4) and (5). As currently

drafted, the rules are unclear as to whether ADRs must only meet the distribution requirement set forth in Rule 4320(e)(6) or whether they must also meet the publicly held shares and round lot holders requirements in Rules 4320(e)(4) and (5). In order to avoid any potential confusion, Nasdaq proposes to clarify the requirements with respect to ADRs.

g. Implementation

Nasdaq recognizes the potential impact of the proposed listing standards relating to preferred stock and secondary classes of common stock. Therefore, Nasdaq proposes to provide those issuers that have preferred stock or secondary classes of common stock listed on Nasdaq at the time the rule filing is approved by the Commission eighteen months to come into compliance with these new listing standards. All other changes proposed in the rule filing would become effective at the time of Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,⁹ which require, 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. Specifically, the proposed rule changes are designed to provide greater transparency and consistency to Nasdaq's listing standards.

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

NASD 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.

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

⁸ Nasdaq will monitor an issuer's bid price beyond 20 business days only in unusual circumstances. For example, Nasdaq may monitor an issuer's bid price beyond 20 days if the issuer maintains a minimum bid price of \$1.00 for ten consecutive business days and then there is no trading in the issuer's securities for the following ten consecutive business days.

⁹ 15 U.S.C. 78o-3(b)(6).

⁶ Rule 4450(b).

⁷ Rule 4450(a).

(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 proposal 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 File No. SR-NASD-2002-89 and should be submitted by December 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-31020 Filed 12-6-02; 8:45 am]

BILLING CODE 8010-01-P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before February 7, 2003.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper

performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to James O'Connor, Director, Office of Entrepreneurial Development, Small Business Administration, 409 3rd Street, SW., Suite 6200, Washington DC 20416.

FOR FURTHER INFORMATION CONTACT: James O'Connor, Director, (202) 205-6929 or Curtis B. Rich, Management Analyst, (202) 205-7030.

SUPPLEMENTARY INFORMATION:

Title: Entrepreneurial Development Management Information System (EDMIS).

Form Nos: 641, 641a.

Description of Respondents: SBA Resource Partners.

Annual Responses: 1,200,000.

Annual Burden: 60,000.

Title: Business Information Center Customer Satisfaction Survey.

Form No: 1916.

Description of Respondents: New established and prospective Small Business Owners Using the services and programs offered by the Business Information Center Program.

Annual Responses: 22,500.

Annual Burden: 1,867.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Cynthia Pitts, Program Analyst, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington DC 20416.

FOR FURTHER INFORMATION CONTACT: Cynthia Pitts, Program Analyst, (202) 205-7570 or Curtis B. Rich, Management Analyst, (202) 205-7030.

SUPPLEMENTARY INFORMATION:

Title: Disaster Home Loan Application.

Form Nos: 5C, 739.

Description of Respondents: Applicant's Requesting SBA Disaster Home Loan.

Annual Responses: 53,975.

Annual Burden: 80,963.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Pam Swilling, Program Review Analyst, Office of Surety Guarantees, Small

Business Administration, 409 3rd Street, SW., Suite 8600, Washington DC 20416.

FOR FURTHER INFORMATION CONTACT: Pam Swilling, Program Review Analyst, (202) 205-6546 or Curtis B. Rich, Management Analyst, (202) 205-7030.

SUPPLEMENTARY INFORMATION:

Title: Surety Bond Guarantee Assistance.

Form Nos: 990, 991, 994, 994B, 994C, 994F and 994H.

Description of Respondents: Small Business Contractors Applying for the Surety Bond Guarantee Program.

Annual Responses: 195,930.

Annual Burden: 53,375.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Linda Roberts, Director, Office of Security Operations, Small Business Administration, 409 3rd Street, SW., Suite 5600, Washington DC 20416.

FOR FURTHER INFORMATION CONTACT: Linda Roberts, Director, (202) 205-6223 or Curtis B. Rich, Management Analyst, (202) 205-7030.

SUPPLEMENTARY INFORMATION:

Title: Statement of Personal History.

Form No: 912.

Description of Respondents: Applicant's for Assistance or Temporary Employment in Disaster.

Annual Responses: 55,000.

Annual Burden: 13,750.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Joan Bready, Business Development Specialist, Office of Small Business Development Centers, Small Business Administration, 409 3rd Street, SW., Suite 4600, Washington DC 20416

FOR FURTHER INFORMATION CONTACT: Joan Bready, Business Development Specialist, (202) 205-7384 or Curtis B. Rich, Management Analyst, (202) 205-7030.

SUPPLEMENTARY INFORMATION:

Title: SBDC Program and Financial Reports.

Form Nos: SF-269, SF-270.

Description of Respondents: SBDC Directors.

Annual Responses: 114.

¹⁰ 17 CFR 200.30-3(a)(12)