

of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the Plan provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the CHX will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under the Plan, on a case by case basis, or if a violation requires formal disciplinary action.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act<sup>10</sup>, that the proposed rule change (SR-CHX-2001-08), be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-30142 Filed 12-4-01; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45109; File No. SR-NASD-2001-19]

### Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc., Relating to Reporting Requirements for Clearing Members

November 27, 2001.

On March 21, 2001, 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 ("SEC" or "Commission"), 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> a proposed rule change relating to reporting requirements for members that are clearing firms. The proposed rule change was published for comment in the **Federal Register** on May 9, 2001.<sup>3</sup> The Commission received five comment

letters on the proposed rule change.<sup>4</sup> On June 6, 2001, NASD Regulation filed Amendment No. 1 to the proposed rule change.<sup>5</sup> On November 1, 2001, NASD Regulation filed Amendment No. 2 to the proposed rule change.<sup>6</sup> This order approves the proposed rule change as amended.

### I. Description of the Proposed Rule Change

NASD Regulation is developing a new business model regarding the surveillance and examination of NASD members. The new program's official title is Integrated National Surveillance and Information Technology Enhancements (commonly referred to as "INSITE"). INSITE will allow NASD

<sup>4</sup> See Letters to Jonathan G. Katz, Secretary, Commission, from D. Stuart Bowers, Senior Vice President, Legg Mason Wood Walker, Inc., John H. Haynie, Managing Director, Wachovia Securities, Inc., Thomas F. Grabowski, Vice President, BNY Clearing Services, LLC, Douglas W. Noll, First Vice President, Stifel, Nicolaus & Company, Incorporated, Michael D. Duffy, Director of Operations, U.S. Bancorp Piper Jaffray, and Ken Cameranesi, Senior Vice President, Wells Fargo Investments, dated May 17, 2001 ("The Firms' Letter"); Harry D. Frisch, Esq., Senior Vice President, iClearing LLC, dated June 7, 2001 ("iClearing Letter"); Gregory P. Vitt, Senior Vice President, A.G. Edwards & Sons, Inc., dated June 28, 2001 ("A.G. Edwards Letter"); and W. Leo McBlain, Chairman and Cindy Foster, Chair, FIF Service Bureau Committee, Financial Information Forum, dated June 28, 2001 ("FIF Letter").

<sup>5</sup> See Letter from Shirley H. Weiss, Office of General Counsel, NASD Regulation, Inc., to Jonathan G. Katz, Secretary, Commission (June 4, 2001) ("Amendment No. 1"). Amendment No. 1 responds to the Firms' letter by reiterating the commitment of NASD Regulation to work with its member firms to facilitate reporting requirements under proposed Rule 3150. Further, NASD Regulation represented that it conducted and would continue to conduct a series of meetings with the service bureaus and member clearing firms to explain and modify data element requirements. Moreover, NASD Regulation amended the proposed rule text to include both clearing and self-clearing member firms.

<sup>6</sup> See Letter from Patrice M. Gliniecki, Vice President and Deputy General Counsel, NASD Regulation, Inc., to Jonathan G. Katz, Secretary, Commission (November 1, 2001) ("Amendment No. 2"). Amendment No. 2 responds to comment letters received by the Commission, as well as comment letters received by NASD Regulation from Harris Schwartz, Nordea Securities, Inc., dated June 8, 2001 ("Nordea Letter"); Bonnie K. Wachtel, CEO and Wendie L. Wachtel, COO, Wachtel & Co., Inc., dated June 29, 2001 ("Wachtel Letter"); and Michael Viviano, Chairman, Operations Committee, Christopher R. Franke, Chairman, Self-Regulatory and Supervisory Practices Committee, and Gerard McGraw, Chairman, Clearing Firms Committee, Securities Industry Association, dated July 19, 2001 ("SIA Letter"). In particular, Amendment No. 2 clarifies that only clearing and self-clearing firms that are members (not non-members) will be required to report the prescribed data. Amendment No. 2 provides additional information on the data element requirements, and proposes a phase-in schedule for the implementation of reporting requirements. Last, Amendment No. 2 amends the rule text to include an exemptive provision from the reporting requirements, pursuant to the Rule 9600 Series.

Regulation to concentrate its examinations on the higher-risk segments of the industry; focus the content of each examination on higher-risk topics; streamline the examination process for the examiners and members; better coordinate regulatory findings with other NASD Regulation departments; and provide specialized training to enhance and maintain examiner's competency levels.

According to NASD Regulation, the surveillance component of the INSITE program will produce reports that identify member "exceptions" based on historical and current comparisons of member data. Further, the exceptions will trigger follow-up reviews and possible member examinations. To facilitate the surveillance component of INSITE, NASD Regulation proposed to adopt Rule 3150 to require all members that are clearing firms (both those that are self-clearing and those that clear for other firms) to report certain data (*i.e.*, data elements) to the NASD Regulation Department of Member regulation ("Member Regulation").<sup>7</sup> Under the NASD's proposal, a clearing firm member may enter into an agreement with a third party pursuant to which the third party agrees to fulfill the clearing firm's obligations under proposed Rule 3150. Notwithstanding the existence of such an agreement, NASD Regulation proposed that each member that is a clearing firm would be responsible for complying with the requirements of the proposed rule change.

The text of proposed Rule 3150 does not specify the data that must be reported to NASD Regulation. Initially, the data elements that NASD Regulation will require its members that are clearing firms to submit to the Association pursuant to proposed Rule 3150 included items such as trade cancellations (T+1 forward) and as-of trades, aggregate net liquidating equity in each firm's correspondents' proprietary accounts, and unsecured customer debits. NASD Regulation represented that it would continue to work its clearing firm members and the SEC staff in identifying the data that is needed in order to operate the surveillance component of INSITE. NASD Regulation would also provide its clearing firm members with advance notice through the NASD Notice to Members process (or similar guidance) of any changes to the required data

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 44251 (May 3, 2001), 66 FR 23750 (SR-NASD-2001-19)

<sup>7</sup> The Association anticipates requesting members that are clearing firms to submit data electronically. Telephone conversation between Shirley W. Weiss, Office of General Counsel, NASD Regulation, and Heidi Pilpel, Special Counsel, and Lisa Jones, Attorney, Division of Market Regulation, Commission (May 2, 2001).

elements. Moreover, NASD Regulation would advise its clearing firm members of the format to be used in transmitting information pursuant to proposed Rule 3150, and the methodology by which NASD Regulation will require its clearing firm members to submit the information to the Association.

## II. Summary of Comments

The Commission received five comment letters on the proposal.<sup>8</sup> In addition, NASD Regulation received three comment letters regarding the proposal.<sup>9</sup> There were several issues raised by commenters.

First, commenters requested that NASD Regulation give further details on the data elements that were to be collected.<sup>10</sup> Further, commenters questioned the usefulness of the required data elements, since the requirements tend to duplicate information already provided by clearing and self-clearing firms through Financial and Operational Combined Uniform Single ("FOCUS") Reports, the NASD's Automated Confirmation Transaction Service ("ACT") and Order Audit Trail System ("OATS").<sup>11</sup>

In response to the commenters' request for clarification of the required data elements, the NASD Regulation has created an INSITE Web site from which firms may obtain information.<sup>12</sup> Members may review the proposed Firm Data Filing Technical Specifications that will be required under Rule 3150 and a bullet point presentation of the INSITE Exam Program, which describes the INSITE program in detail. The Web site will also feature questions asked by clearing and self-clearing firms and NASD Regulation's answers to their questions. NASD Regulation has also represented that it will continue to report modifications or clarifications of the reporting requirements on the INSITE Web site.<sup>13</sup>

In addition, starting in June 2001, NASD Regulation conducted a series of workshops with clearing and self-clearing firms around the country. According to NASD Regulation, the purpose of these workshops was, among

other things, to explain the data elements that firms would be required to report under proposed Rule 3150, to answer the firms' questions about the reporting process, and to gather additional information about the firms' capability to report required information.<sup>14</sup> NASD Regulation stated that it would continue to modify the reporting requirements as necessary based on the information it has received, and continues to receive, from its member firms and service bureaus.<sup>15</sup> Moreover, as suggested by the SIA,<sup>16</sup> NASD Regulation is currently meeting with a specially formed committee ("SIA Committee") comprised of technology, compliance, operations, and legal professionals to discuss such issues as the data elements, the implementation schedule for firm filings, and reports to member firms. NASD Regulation staff expects to have an on-going relationship with the Committee as a means of obtaining industry input.<sup>17</sup>

In response to the commenters' concerns of the duplication of reporting information through FOCUS reports, ACT, and OATS, NASD Regulation has represented that data reported through OATS will not be duplicated, since that data pertains to orders, and the INSITE data would pertain to transaction and account data. Similarly, information reported through ACT does not provide the detail required by the INSITE program regarding cancellations and rebills.<sup>18</sup>

In addition, NASD Regulation noted that some of the required data duplicates information required to be reported in FOCUS Reports.<sup>19</sup> According to NASD Regulation, the difference is the frequency with which INSITE information would be reported. INSITE information, which can change very rapidly and which can have a significant impact on a firm's capital, would be reported on a daily basis,<sup>20</sup> giving NASD Regulation the opportunity to discover capital problems almost as they occur, whereas FOCUS Reports are filed on a monthly and quarterly basis.<sup>21</sup> Furthermore, NASD Regulation believes that the data

elements also provide valuable insights into potential sales practice issues as they arise.

Second, commenters were concerned that they would not be able to submit the data elements requested in the suggested format due to technical flaws and inconsistencies.<sup>22</sup> In addition, commenters wanted more details and results of the testing completed by the three pilot member firms.<sup>23</sup>

In response to the commenters' concerns, NASD Regulation represented that it is in the process of conducting a pilot program with three clearing firms (Bear, Stearns & Co. Inc., Pershing, a division of Donaldson, Lufkin & Jenrette Securities Corporation, and Wexford Clearing Services Incorporated, a division of Prudential Securities Incorporated). These pilot firms are electronically reporting on a daily basis a portion of the firm data elements, and the pilot firms have not reported any significant problems in collecting and reporting this data. According to NASD Regulation, the pilot program has helped NASD Regulation to identify and resolve any technical problems experienced by these firms.<sup>24</sup> NASD Regulation expects, as with any new program or technology, that systems failures may arise. When that happens, firms will be expected to report these failures to NASD Regulation, correct them as expeditiously as possible, and restart the reporting process.<sup>25</sup> Generally, NASD Regulation represents that a system failure that has happened in the normal course of doing business, and which a firm is attempting to correct, will not be viewed as a disciplinary matter.<sup>26</sup>

The proposed reporting program has been designed to require firms to provide summaries of information that they already collect, including, among other things, aggregate net liquidating equity, exchange and non-exchange transactions, options transactions, debt transactions, customer accounts, short interest, unsecured customer debits, trade cancellations and as-of trades summaries and detail. NASD Regulation is specifying the file formats. Firms may report this data via NASD Regulation's Form Filing Web site or, for firms with connectivity to the NASD OATS private network, through that file transfer protocol.<sup>27</sup> NASD Regulation recognizes that firms may have to make some

<sup>8</sup> See note 4, *supra*.

<sup>9</sup> See note 6, *supra*.

<sup>10</sup> See The Firms Letter; iClearing Letter; SIA Letter.

<sup>11</sup> See A.G. Edwards Letter; SIA Letter.

<sup>12</sup> Currently, NASD members may review the Firm Data Elements on NASD Regulation's Web site, <http://www.nasdr.com/insite.htm>, at ages 16–18. In the initial implementation of the INSITE program, NASD Regulation represents that no new data elements will be added, and some data elements may be eliminated. NASD Regulation does not anticipate materially expanding the data element requirements.

<sup>13</sup> See Amendment No. 2, p. 3.

<sup>14</sup> See *id.*

<sup>15</sup> *Id.*

<sup>16</sup> See SIA Letter.

<sup>17</sup> See note 13, *supra*.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> NASD Regulation represents that the INSITE program may, in the future, require firms to report certain data elements less frequently. NASD Regulation will publish any change in the daily reporting requirements well in advance of the date on which that change will occur.

<sup>21</sup> See note 13, *supra*.

<sup>22</sup> See The Firms Letter; iClearing Letter; A. G. Edwards Letter.

<sup>23</sup> See The Firms Letter; iClearing Letter.

<sup>24</sup> See Amendment No. 2, p. 4.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

programming changes in order to create the daily summaries required by the INSITE program. The information required to establish these programs is currently being made available on the INSITE Web site, and firms subject to proposed Rule 3150 should have ample time to prepare for their participation in the program.<sup>28</sup> Further, members are advised on the INSITE Web site that NASD Business and Technology Support Services is the primary source of information about INSITE, and that it can be used as a source for answers to questions about reporting responsibilities, technical specifications for reporting to the NASD, deadlines, and more.<sup>29</sup>

Moreover, as suggested by the SIA, NASD Regulation has represented that it is committed to developing a system on its Web site that will permit members to review the information that has been reported by firms, directly or on their behalf by clearing firms or service bureaus. NASD Regulation will work with its member firms to develop a useful format. NASD Regulation expects this system to be fully functional in the latter part of 2002.<sup>30</sup>

Third, commenters were concerned that the time frame of implementing proposed Rule 3150 would be unrealistic.<sup>31</sup> In response to the commenters concerns, NASD Regulation has stated that its goal is to implement reporting requirements under proposed Rule 3150 in as reasonable a manner as possible in order to give clearing firms, self-clearing firms, and service bureaus sufficient time to prepare. NASD Regulation plans to begin requiring reporting under proposed Rule 3150 as of December 10, 2001. The three member firms that have been participating in the pilot program will be phased in first. All three firms will be reporting the published Firm Data Elements under proposed Rule 3150 by mid-January 2002.

NASD Regulation represents that it will phase in all other members in several stages. NASD Regulation is currently working with the SIA Committee and FIF to establish these dates. NASD Regulation will publish the schedule of phase-ins as soon as it has been established, but in no event will NASD Regulation give member firms less than six-months notice of their start-up date. NASD Regulation also represents that it will take into account broker-dealers' relationships with

service bureaus in establishing the phase-in schedules. NASD Regulation expects Rule 3150 to be fully implemented by the end of 2002.<sup>32</sup>

NASD Regulation also proposed to amend proposed Rule 3150 to eliminate the requirement that all data be reported on a daily basis, in order to give NASD Regulation the flexibility it needs to require that certain data elements be reported less frequently.<sup>33</sup> As with the current data elements, NASD Regulation would announce any change in the reporting requirements well in advance of their implementation.<sup>34</sup>

Fourth, commenters suggested that the Association include a provision for exemptive relief from the reporting requirements of proposed Rule 3150.<sup>35</sup> These commenters suggested that such relief might be based on the nature of a firm's activities, its risk factors, and the size of its capital reserves.<sup>36</sup>

In response to these commenters, NASD Regulation has decided to include a provision in proposed Rule 3150 that would permit broker-dealers to request an exemption from the reporting requirements of proposed Rule 3150 pursuant to the Rule 9600 Series.<sup>37</sup> As stated in proposed Rule 3150(b), exemptions from any or all of the Rule 3150 reporting requirements will be granted only under exceptional and unusual circumstances. According to NASD Regulation, the size of a firm will not be the determinative factor in deciding whether to grant such exemptions, since wholesale exemptions based solely on the size of a firm could jeopardize the strength of the INSITE program.

NASD Regulation also proposed additional clarifications to proposed Rule 3150.<sup>38</sup> NASD Regulation proposed to amend the rule language to explicitly refer to both clearing firms and self-clearing firms.<sup>39</sup> In addition, NASD Regulation proposed to amend the rule language to clarify that the Association will only require its *member* clearing and self-clearing firms to report prescribed data pertaining to the member and any member broker-

dealer for which it clears.<sup>40</sup> This should exclude from the parameters of proposed Rule 3150 any broker-dealer that is not registered with the NASD.

### III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>41</sup> In particular, the Commission finds the proposal is consistent with section 15A(b)(6) of the Act,<sup>42</sup> which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the Association's proposal to enhance the surveillance and examination of NASD members via the INSITE program should help to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade because it authorizes the Association to require clearing and self-clearing members to report certain data to be analyzed for indications of sales practice violations. In addition, the data elements reported pursuant to NASD Rule 3150 and NYSE Rule 416<sup>43</sup> will assist regulators in addressing concerns about microcap fraud.<sup>44</sup>

<sup>40</sup> When a clearing firm files data for its own business, NASD Regulation will treat it as a self-clearing firm for purposes of INSITE reporting requirements. In any event, a clearing firm (or a self-clearing firm) is not required to report its own aggregate net liquidating equity; instead, a clearing firm must report the aggregate net liquidating equity of its correspondent firms. (See page 16 of the INSITE Firm Data Technical Specifications, which states that a self-clearing firm may report its aggregate net liquidating equity as NULL, or no value.)

<sup>41</sup> In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78o-3(b)(9). The Commission finds that Rule 3150 appropriately balances the need of NASD Regulation for regulatory information with the need to provide clearing firms flexibility in reporting such information in a manner that is not unduly burdensome. For example, NASD Regulation has tailored the data elements, committed to provide six-months of notice of implementation, worked closely with the industry on implementation of Rule 3150, and provided alternative methods for reporting, such as service bureaus.

<sup>42</sup> 15 U.S.C. 78o-3(b)(6).

<sup>43</sup> See Securities Exchange Act Release No. 44135 (March 30, 2001), 66 FR 18334 (April 6, 2001) (order approving SR-NYSE-00-60).

<sup>44</sup> NASD Regulation reiterates its commitment that it is collecting the data pursuant to Rule 3150 solely for regulatory purposes. Telephone conversation between Shirley H. Weiss, Office of General Counsel, NASD Regulation and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission (Nov. 26, 2001).

<sup>32</sup> Telephone conversation between Shirley H. Weiss, Office of General Counsel, NASD Regulation and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission (Nov. 27, 2001).

<sup>33</sup> See Amendment No. 2, p. 5.

<sup>34</sup> *Id.*

<sup>35</sup> See Nordea Letter; Wachtel Letter.

<sup>36</sup> *Id.*

<sup>37</sup> NASD Regulation is also proposing a rule change to Rule 9610 that will add Rule 3150 to the rules under which members can seek exemptive relief.

<sup>38</sup> See Amendment No. 2, p. 6.

<sup>39</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> See The Firms Letter; iClearing Letter; FIF Letter.

The Commission finds that the data elements that NASD Regulation initially will require its clearing and self-clearing members to provide pursuant to proposed Rule 3150, including items such as trade cancellations (T+1 forward) and as-of trades, aggregate net liquidating equity in each firm's proprietary accounts, and unsecured customer debits, have been sufficiently identified by NASD Regulation as core data that is needed in order to operate the surveillance component of INSITE.<sup>45</sup> Further, the Association has represented that in the initial implementation of the INSITE program, no new data elements will be added, and some data elements may be eliminated. Moreover, the Association noted that it does not anticipate materially expanding the data element requirements.

After careful consideration of the commenters' concerns about the intricacies and usefulness of the data elements required pursuant to proposed Rule 3150, the Commission believes that NASD Regulation's INSITE Web site should help to keep NASD members informed of all modifications and clarifications of the reporting requirements. In addition, the Commission finds that NASD Regulation has been and will continue to be committed towards modifying the reporting requirements as necessary based on the information that it receives from member firms and service bureaus, thus promoting just and equitable principles of trade consistent with the Act.

The Commission has also carefully considered the commenters' concerns about the duplication of reporting information through FOCUS reports, ACT and OATS. The Commission finds that although some of the required data duplicates information required to be reported in FOCUS reports, the required data pursuant to proposed Rule 3150 will be reported on a daily basis, at least initially, which would give NASD Regulation the opportunity to discover capital problems almost as they occur. Further, NASD Regulation has represented that INSITE data would pertain to transaction and account data. Therefore, the Commission believes that the data elements should provide valuable insights into potential sales practice issues as they arise, consistent with section 15A(b)(6) of the Act.

The Commission finds that NASD Regulation has sufficiently addressed commenters' concerns about any

possible technical flaws and inconsistencies of the INSITE program. The Commission believes that NASD Regulation's pilot program with three clearing firms should help to identify any significant programs in collecting and reporting this data, and any technical problems experienced by member firms. The Association notes that should a system failure happen in the normal course of doing business, and a firm is attempting to correct it, the Association would not view the violation of Rule 3150 as a disciplinary matter.<sup>46</sup> Further, NASD Regulation represents that the reporting program is designed to require member firms to provide summaries of information that it already collects. Moreover, NASD Regulation is specifying the file formats and providing information on the INSITE Web site on how to establish the reporting program should some firms need to make some programming changes. Therefore, the Commission believes that the Association will work with its member firms to develop a useful format.

After careful consideration of the commenters' concerns about the ambiguous time frame of implementing reporting requirements pursuant to proposed Rule 3150, the Commission finds that the Association's proposal to begin requiring reporting under proposed Rule 3150 as of December 10, 2001, phase in the three pilot member firms first, and thereafter phase in other member firms in several stages should reasonably help the Association to implement the reporting requirements of proposed Rule 3150 by giving clearing and self-clearing firms, and service bureaus sufficient time to prepare. The Commission believes that the representation by NASD Regulation that it would give member firms no less than six-months notice of their start-up date should provide clearing and self-clearing member firms adequate notice to prepare for the reporting requirements. Further, NASD Regulation has represented that it would take into account broker-dealer relationships with service bureaus in establishing the phase-in schedules.

The Commission also finds that the Association's proposal to include a provision for exemptive relief from the reporting requirements of proposed Rule 3150 should alleviate commenters' concerns that members under certain circumstances should be exempted from the reporting requirements. The

Commission notes, in particular, that the size of a firm will not be the determinative factor in deciding to grant such exemption in order not to jeopardize the strength of the INSITE program.

#### IV. Amendments No. 1 and No. 2

The Commission finds good cause for approving Amendments No. 1 and 2 prior to the thirtieth day after notice of the publication in the **Federal Register**. In addition to making minor technical changes to the proposed rule language, these amendments (1) explicitly refer to both clearing firms and self-clearing firms, and clarify that only *member* clearing and self-clearing firms are required to report the prescribed data; (2) eliminate the requirement that all data be reported on a daily basis; and (3) provide an exemption process from Rule 3150. Additionally, these amendments address commenters' concerns about duplicative data reporting and the proposed implementation date, and provide the assurance of NASD Regulation that it will work in close coordination with its member firms in implementing the reporting requirements under rule 3150.

Accordingly, the Commission finds that by providing Amendments Nos. 1 and 2 to proposed Rule 3150 the Rule should enable the Association to detect unusual trading patterns at an early stage and thereby better protect investors and the public interest from abusive sales practices. The Commission believes that it is not necessary to separately solicit comment on Amendment Nos. 1 and 2 prior to approving this proposal because it finds that these changes to the proposed rule language respond to and incorporate suggestions made by commenters to the original proposal. The Commission therefore finds that acceleration of Amendments No. 1 and 2 is appropriate.

#### V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2, including whether the proposed amendments are 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 amendments that are filed with the Commission, and all written communications relating to the amendments between the Commission and any person, other than those that

<sup>45</sup> See Firm Data Filing Technical Specifications under Rule 3150, available at pp. 16-18 at [www.nasdr.com/insite.htm](http://www.nasdr.com/insite.htm).

<sup>46</sup> The Commission notes, however, that a series of systems failures raises issues as to a broker-dealer's fulfillment of its regulatory responsibilities. See Lowell H. Listrom, 50 S.E.C. 883, 887 note 7 (1992).

may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD.

All submissions should refer to File No. SR-NASD-2001-19 and should be submitted by December 26, 2001.

## VI. Conclusion

*It is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>47</sup> that the proposed rule change (SR-NASD-2001-19), as amended, is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>48</sup>

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 01-30138 Filed 12-4-01; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45116; File No. SR-NASD-2001-84]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. To Change the Description of the Market Capitalization Listing Standard to Market Value of Listed Securities

November 28, 2001.

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 November 14, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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. 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 has filed with the Commission a proposed rule change to change the description of the market

capitalization listing standard to market value of listed securities. Nasdaq is also proposing to provide a definition of the term "listed securities" in Nasdaq's Marketplace Rules. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

#### Rule 4200. Definitions

(a) For purposes of the Rule 4000 Series, unless the context requires otherwise:

(1)-(18) No change

(19) "*Listed securities*" means securities quoted on Nasdaq or listed on a national securities exchange.

Former (19)-(36) renumbered as (20)-(37)

(b) No change

#### Rule 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) No change

(2)(A) For initial inclusion, the issuer shall have:

(i) No change

(ii) *market value of listed securities* [market capitalization] of \$50 million (currently traded issuers must meet this requirement and the bid price requirement under Rule 4310(c)(4) for 90 consecutive trading days prior to applying for listing); or

(iii) No change

(B) For continued inclusion, the issuer shall maintain:

(i) No change

(ii) *market value of listed securities* [market capitalization] of \$35 million; or

(iii) No change

(3) For initial inclusion, the issuer shall have an operating history of at least one year or a *market value of listed securities* [market capitalization] of \$50 million.

(4)-(7) No change

(8)(A) No change

(B) No change

(C) A failure to meet the continued inclusion requirements for *market value of listed securities* [market capitalization] shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuers 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.

(9)-(29) No change

(d) No change

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

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

(a)-(d) No change

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

(1) No change

(2)(A) For initial inclusion, the issuer shall have:

(i) No change

(ii) *market value of listed securities* [market capitalization] of U.S. \$50 million (currently traded issuers must meet this requirement for 90 consecutive trading days prior to applying for listing); or

(iii) No change

(B) For continued inclusion, the issuer shall maintain:

(i) No change

(ii) *market value of listed securities* [market capitalization] of U.S. \$35 million; or

(iii) No change

(C) No change

(D) A failure to meet the continued inclusion requirements for *market value of listed securities* [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.

(E) No change

(3)-(25) No change

(f) No change

#### Rule 4420. Quantitative Designation Criteria

In order to be designated for the Nasdaq National Market, an issuer shall

<sup>47</sup> 15 U.S.C. 78s(b)(2).

<sup>48</sup> 17 CFR 200.30-3(a)(12).

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

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