

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49622; File No. SR-NASD-2004-063]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify NASD Rule 4619 To Correct a Typographical Error

April 27, 2004.

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 April 14, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II and III below, which items have been prepared by Nasdaq. Nasdaq filed this proposal pursuant to section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(3)<sup>4</sup> thereunder, as one concerned solely with the administration of the self-regulatory organization, 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 the Substance of the Proposed Rule Change

Nasdaq proposes to modify NASD Rule 4619 to correct a typographical error in the rule text.

Below is the text of the proposed rule change. Proposed new language is *italics*; proposed deletions are in [brackets].<sup>5</sup>

\* \* \* \* \*

#### 4619. Withdrawal of Quotations and Passive Market Making

(a)-(b) No change

(c) Excused withdrawal status based on circumstances beyond the market maker's control, other than systemic equipment problems, may be granted for

up to five (5) business days, unless extended by Nasdaq MarketWatch. Excused withdrawal status based on demonstrated legal or regulatory requirements, supported by appropriate documentation and accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon notification, be granted for not more than sixty (60) days (unless such request is required to be made pursuant to paragraph [(d)](e) below). Excused withdrawal status based on religious holidays may be granted only if written notice is received by the Association one business day in advance and is approved by the Association. Excused withdrawal status based on vacation may be granted only if:

(1)-(3) No change

\* \* \* \* \*

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

In its filing with the Commission, Nasdaq 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. 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

###### 1. Purpose

The proposed rule change seeks to correct a typographical error in NASD Rule 4619(c). The cross reference to "paragraph (d)" in NASD Rule 4619(c) should be deleted and replaced with a cross reference to "paragraph (e)" to reflect a previously approved rule change adding a new paragraph (b).<sup>6</sup>

###### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,<sup>7</sup> in general and, in particular, with section 15A(b)(6) of the Act,<sup>8</sup> in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and

facilitating transactions in securities and, in general, to protect investors and the public interest. The proposed rule change clarifies NASD Rule 4619(c) by correcting a typographical error.

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

Nasdaq does not believe that the proposed rule change will impose 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

The foregoing proposal has become effective pursuant to section 19(b)(3)(A)(iii) of the Act<sup>9</sup> and Rule 19b-4(f)(3)<sup>10</sup> thereunder as one concerned solely with the administration of the self-regulatory organization. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such 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.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number NASD-2004-063 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number NASD-2004-063. This file number should be included on the

<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)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(3).

<sup>5</sup> Nasdaq has stated that changes are marked from the text of Rule 4619(c) that was approved in Securities Exchange Act Release No. 49427 (March 16, 2004), 69 FR 13606 (March 23, 2004), which is not yet reflected in the electronic NASD Manual available at <http://www.nasdaq.com>. Nasdaq represents that there are no other pending or approved rule filings that would affect the text of this Rule.

<sup>6</sup> See Securities Exchange Act Release No. 49427 (March 16, 2004), 69 FR 13606 (March 23, 2004).

<sup>7</sup> 15 U.S.C. 78o-3.

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(3).

subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number NASD-2004-063 and should be submitted on or before May 25, 2004.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-10035 Filed 5-3-04; 8:45 am]

BILLING CODE 8010-01-P

## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #P030]

#### Federated States of Micronesia (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective April 14, 2004, the above numbered declaration is hereby amended to establish the incidence period as beginning on April 8, 2004, and continuing through April 14, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is June 9, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59008)

Dated: April 28, 2004.

**S. George Camp,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. E4-1018 Filed 5-3-04; 8:45 am]

BILLING CODE 8025-01-P

## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3574]

#### Federated States of Micronesia

As a result of the President's major disaster declaration for Public Assistance on April 10, 2004, and Amendment 2 adding Individual Assistance on April 27, 2004, I find that the State of Yap, located within the Federated States Of Micronesia, constitutes a disaster area due to damages caused by Typhoon Sudal occurring on April 8, 2004, and continuing through April 14, 2004. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on June 28, 2004, and for economic injury until the close of business on January 27, 2005, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 419004, Sacramento, CA 95841-9004.

The interest rates are:

|   | Percent |
|---|---------|
| For Physical Damage:  |         |
| Homeowners with credit available elsewhere .....  | 6.125   |
| Homeowners without credit available elsewhere .....                                     | 3.125   |
| Businesses with credit available elsewhere .....  | 5.800   |
| Businesses and non-profit organizations without credit available elsewhere .....        | 2.900   |
| Others (including non-profit organizations) with credit available elsewhere .....       | 4.875   |
| For Economic Injury:  |         |
| Businesses and small agricultural cooperatives without credit available elsewhere ..... | 2.900   |

The number assigned to this disaster for physical damage is 357408 and for economic injury the number is 9ZA900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 28, 2004.

**S. George Camp,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. E4-1019 Filed 5-3-04; 8:45 am]

BILLING CODE 8025-01-P

## SMALL BUSINESS ADMINISTRATION

### Small Business Size Standards: Waiver of the Nonmanufacturer Rule

**AGENCY:** Small Business Administration.

**ACTION:** Notice of intent to waive the Nonmanufacturer Rule for Aluminum Sheet, Plate, and Foil Manufacturing.

**SUMMARY:** The U.S. Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for Aluminum Sheet, Plate, and Foil Manufacturing. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA's 8(a) Business Development Program.

**DATES:** Comments and sources must be submitted on or before May 14, 2004.

**FOR FURTHER INFORMATION CONTACT:** Edith Butler, Program Analyst, by telephone at (202) 619-0422; by FAX at (202) 205-7280; or by e-mail at [edith.butler@sba.gov](mailto:edith.butler@sba.gov).

**SUPPLEMENTARY INFORMATION:** Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product.

This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any "class of products" for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1204, in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines "class of products" based on six digit coding systems. The first coding system is the Office of Management and Budget North American Industry Classification System (NAICS). The

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