

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

1. Purpose

In March 1990, the Commission approved the adoption of Section 107 of the *Amex Company Guide* containing guidelines for listing securities that have features common to both equity and debt securities, yet do not fit within the traditional definitions of such securities.<sup>2</sup> Sometimes referred to as "hybrids," these securities can take a variety of forms. For example, the Exchange has listed under Section 107 a zero coupon intermediate term note, which at maturity returns the face amount of the note plus a percentage of the appreciation, if any, in a well known index such as the S&P 500, or a debt security with a relatively high fixed return, but whose value at maturity is linked to the performance of an unrelated common stock.

Section 107A currently specifies the minimum issuer qualifications, the minimum public distribution and aggregate market value of the security and other criteria to assist the Exchange in its case by case review and determination of the suitability of each security prior to its approval for listing.

The Exchange now proposes to conform its listing criteria for hybrid securities to those of the NYSE by eliminating the current requirements of Section 107A that require a certain minimum redemption price and only allow cash settlement of covered instruments if settled in U.S. dollars.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b) in particular in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest in that it conforms the Exchange's listing standards for hybrid securities to those of the NYSE.

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>2</sup> See Securities Exchange Act Release No. 27753 (Mar. 1, 1990), 55 FR 8626 (Mar. 8, 1990).

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from April 26, 1996, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(e)(6) thereunder.<sup>4</sup>

The Commission notes that although it is reasonable for the Exchange to remove the affected provisions as mandatory listing standards,<sup>5</sup> proposals that deviate from these standards might raise novel or significant regulatory issues that would require a proposed rule change to list the product.<sup>6</sup>

At any time within 60 days of the filing of the 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the

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

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

<sup>5</sup> The affected provisions currently prevent the listing of (1) any cash settled product settled in any currency other than U.S. dollars or (2) any product that had a mandatory redemption price of less than three dollars.

<sup>6</sup> See Securities Exchange Act Release No. 27753 (Mar. 1, 1990), 55 FR 8626 (Mar. 8, 1990) (order approving File-No. SR-Amex-89-29). For example, a stock index-linked note that was payable in a foreign currency would raise important regulatory issues among which might include the need to address appropriate product term and risk disclosure, customer suitability, and settlement procedures. Accordingly, the Commission expects the Amex to consult with it on the need to file a Section 19(b) rule change to list a product with such terms under the Rule 107A listing standards.

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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-96-15 and should be submitted by May 30, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

Margaret H. McFarland,  
Deputy Secretary.

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[Release No. 34-37163; File No. SR-NASD-96-09]

**Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Distribution of Interim Reports to Beneficial Owners and the Use of New Technology to Communicate Such Information to Shareholders**

May 2, 1996.

On March 13, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change 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> The rule change amends Part II of Schedule D to the NASD By-Laws ("Schedule D")<sup>3</sup> by adding precatory language recommending that Nasdaq issuers distribute interim reports to both shareholders of record and beneficial shareholders<sup>4</sup> to shareholders if they

<sup>7</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> *NASD Manual*, Schedules to the By-Laws, Schedule D, Part II (CCH) ¶¶ 1803-06A.

<sup>4</sup> Interim reports are reports that are voluntarily distributed by an issuer as part of its shareholder relations activities and do not include quarterly financial reports required to be filed with the Commission pursuant to Sections 13(a) and 15(d) of the Act, 15 U.S.C. 78m(a), 78o(d).

distribute such reports to shareholders of record<sup>5</sup> and encouraging issuers to utilize communications technology to communicate to shareholders in a timely manner.

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 37010, March 21, 1996) and by publication in the Federal Register (61 FR 13909, March 28, 1996). No comment letters were received. This order approves the proposed rule change.

The rule change approved today adds new Section 1(d) to Part II of Schedule D recommending that Nasdaq issuers distribute interim reports to both shareholders of record and beneficial shareholders if they distribute such reports to shareholders of record. The rule change also adds new Section 2(f) of Part II to Schedule D regarding the qualification requirements for issuers of non-Canadian foreign securities and American Depositary Receipts that are included in The Nasdaq Stock Market. Such issuers also are recommended to distribute interim reports to both shareholders of record and beneficial shareholders if they distribute such reports to shareholders of record. The rule change will apply to both the Nasdaq National Market and The Nasdaq SmallCap Market tiers of The Nasdaq Stock Market.

The rule change is the product of a review by various industry groups, including the American Society of Corporate Secretaries and the Securities Industry Association, of listed<sup>6</sup> companies' dissemination of interim earnings reports to shareholders. The industry groups have been attempting to achieve some uniformity among listed companies in the handling of interim earnings reports. Presently, some listed companies distribute interim reports to both record and beneficial shareholders, some listed companies send interim reports to shareholders of record only, and some do not send interim reports to any shareholders. The portion of the proposed rule change recommending that Nasdaq issuers distribute interim reports to both shareholders of record and beneficial shareholders to shareholders if they distribute such

<sup>5</sup> The substance of this portion of the proposed rule change has been adopted by the New York Stock Exchange and American Stock Exchange. See NYSE Company Manual Rule 203.02 and American Stock Exchange Company Guide Section 623.

<sup>6</sup> The securities of Nasdaq issuers are "included in" The Nasdaq Stock Market; they are not "listed on" the Nasdaq Stock Market. However, for purposes of this filing, the term "listed" will apply to Nasdaq, as well as exchange-listed securities.

reports to shareholders of record is consistent with voluntary provisions adopted by the New York Stock Exchange and the American Stock Exchange<sup>7</sup> and, therefore, would provide uniformity among these markets regarding the handling of listed company interim earnings reports.

New Sections 1(d) and 2(f) to Part II of Schedule D also encourage Nasdaq issuers to consider additional technological methods to communicate such information to shareholders in a timely and less costly manner as such technology becomes available. This provision is intended to encourage Nasdaq issuers to utilize new communications technology available to many but not all beneficial shareholders. The NASD stated in its filing that Nasdaq issuers should consider this provision of the rule change as a supplement to the first provision of the proposed rule change recommending that Nasdaq issuers distribute interim reports to both shareholders of record and beneficial shareholders to shareholders if they distribute such reports to shareholders of record.

The rule change is precatory and does not impose new requirements on issuers. Nasdaq issuers that distribute interim reports to shareholders of record only would not be subject to Nasdaq actions for non-compliance with Nasdaq listing requirements.

The Commission finds that the rule change is consistent with the provisions of Section 15A(b)(6) of the Act. The rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest by, among other things, encouraging Nasdaq issuers to distribute interim reports to both shareholders of record and beneficial shareholders to shareholders if they distribute such reports to shareholders of record. This provision of the proposed rule change is consistent with provisions adopted by the New York Stock Exchange and the American Stock Exchange<sup>8</sup> and, therefore, will provide uniformity among these markets regarding the handling of listed company interim earnings reports. The rule change also encourages Nasdaq issuers to consider new technological means to communicate the information contained in their interim reports to shareholders

<sup>7</sup> See *supra* note 5.

<sup>8</sup> See *supra* note 5.

in a timely and less costly manner. These provisions are intended to enhance shareholder communications in The Nasdaq Stock Market.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-NASD-96-09 be, and hereby is, approved.

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

Margaret H. McFarland,

*Deputy Secretary.*

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[Release No. 34-37162; File No. SR-NSCC-96-01]

**Self-Regulatory Organizations;  
National Securities Clearing  
Corporation; Order Approving a  
Proposed Rule Change Establishing  
Standard Prices for Transfers of Non-  
Continuous Net Settlement Assets  
through the Automated Customer  
Account Transfer Service**

May 2, 1996.

On January 5, 1996, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-NSCC-96-01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> to establish standard prices for certain assets transferred through NSCC's Automated Customer Account Transfer ("ACAT") service. On February 8 and 20, 1996, NSCC filed amendments to the proposed rule change.<sup>2</sup> Notice of the proposal was published on March 6, 1996, in the Federal Register to solicit comments on the proposed rule change.<sup>3</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

**I. Description**

NSCC's proposed rule change modifies NSCC's rules to coincide with its practice of establishing systemized, standard default prices based on asset type for assets which are not eligible for NSCC's Continuous Net Settlement ("CNS")<sup>4</sup> system and which are

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> Letters from Julie Beyers, Associate Counsel, NSCC, to Christine Sibille, Division of Market Regulation, Commission (February 7 and 15, 1996).

<sup>3</sup> Securities Exchange Act Release No. 36907 (February 29, 1996), 61 FR 8997.

<sup>4</sup> A CNS security is a cleared security eligible for transfer on the books of each qualified securities depository (e.g., The Depository Trust Company, or the Philadelphia Depository Trust Company), and

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