

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40968; File No. SR-NASD-98-98]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Pre-Trading Quotation Period for Initial Public Offerings

January 22, 1999.

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 December 23, 1998, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

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

The NASD, through its wholly-owned subsidiary Nasdaq, is proposing to revise its practices concerning market maker quotations in Nasdaq securities that are being quoted for the first time after an initial public offering ("IPO"). Under the proposal, the pre-opening period for the initial display of market maker quotes will be extended to 15 minutes prior to the commencement of trading to permit the development of orderly quotations, with provision for a single additional fifteen minute extension of the pre-opening period of the market is locked or crossed at the conclusion of the first fifteen minute period.

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 III 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

In 1994, Nasdaq established a five minute quotation-only time period for market makers to enter and adjust their first quotations for securities newly released for trading in its market.³ This period, similar to the daily pre-opening display of quotations allowed for Nasdaq securities already trading in the secondary market,⁴ was created to facilitate the opening of trading for IPOs and replaced the previous practice of only allowing immediate and simultaneous initial quotation and trading of Nasdaq IPO securities.

Recently, significant increased volatility has been observed in the opening of IPOs for secondary market trading on Nasdaq. This volatility appears to be the result of many converging factors, including the recent popularity of internet-related stocks, an increase in the influx of retail orders through on-line trading linkages, investor perceptions and expectations as well as other technological and economic factors. Nasdaq believes this excessive volatility has inhibited the smooth functioning of the Nasdaq market during the initial trading of these IPOs to the detriment of all market participants, including public investors.

In response, Nasdaq proposes to extend the current five minute pre-trading quotation period for all IPOs to

³ See Securities Exchange Act Release No. 34254 (June 24, 1994), 59 FR 33808 (June 30, 1994). When an IPO is first authorized for inclusion in Nasdaq, the system displays the time of day when quoting in the issue may begin and the time of day when trading in that issue may begin. Specifically, when a new security is released for trading, the window for quotations has been set to allow market makers a period of five minutes to enter and adjust their quotations prior to the commencement of trading.

⁴ Nasdaq has represented that its practices of providing a pre-trading, quotation-only period for IPO securities is related to Nasdaq Rule 4120, "Trading Halts," and Nasdaq Rule 4613, "Character of Quotations." Nasdaq stated that this practice, like the objectives in Nasdaq Rule 4120, is designed to ensure that markets are not open for trading when unusual circumstances may prevent such markets from remaining fair and orderly. Nasdaq also stated that its current practice is similar to Nasdaq Rule 4613(c) and (e) in that market maker quotations are required to be reasonably related to the prevailing market, and market makers are prohibited from locking or crossing markets. Telephone conversation between Michael L. Loftus, Attorney, Division of Market Regulation, Commission; Robert E. Aber, Senior Vice President and General Counsel, and Thomas P. Moran, Senior Attorney, Office of General Counsel, Nasdaq (Jan. 22, 1999).

fifteen minutes, with the potential for a single, further extension of an additional fifteen minute pre-trade quotation period if the issue is locked or crossed at the conclusion of the first fifteen minute period.⁵ Nasdaq believes that these extended time periods will allow the market participants to better digest and respond to market price indications before an IPO is released for trading and thus provide better information upon which to make trading decisions. Nasdaq also believes that its proposal provides a modicum of opportunity in volatile, fast-paced markets to review and react to dramatic market movements that may manifest themselves in pricing anomalies. While this proposal represents an initial response, Nasdaq notes that it will continue to monitor and review trading activity and market practices with a view towards developing additional proposals to further mitigate excessive volatility in all areas of Nasdaq trading.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Sections 15A(b)(6) and 15A(b)(11)⁶ of the Act in that the proposal is designed to facilitate transactions in securities as well as produce fair and informative quotations and prevent fictitious or misleading quotations.

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

Nasdaq did not solicit or receive written comments with respect to the proposed rule change.

⁵ Nasdaq's MarketWatch Department will determine whether an additional fifteen minute quotation-only period is necessary before trading in an IPO security may begin. The determination of MarketWatch will be based solely upon whether a market is locked or crossed to such an extent that releasing the IPO security for trading would be detrimental to the market or investors. Although MarketWatch will closely monitor pre-trading quotation activity during the entire fifteen minute period, the determination of MarketWatch will be predicated on the status of the market at the expiration of the initial fifteen minute period. Telephone conversation between Michael L. Loftus, Attorney, Division of Market Regulation, Commission; Robert E. Aber, Senior Vice President and General Counsel; and Thomas P. Moran, Senior Attorney, Office of General Counsel, Nasdaq (Jan. 22, 1999).

⁶ 15 U.S.C. 78o-3(b)(6) and 78o-3(b)(11).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

III. 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. 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 submissions, 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 persons, 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, N.W., Washington, D.C. 20549. 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-98-98 and should be submitted by February 19, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has carefully reviewed Nasdaq's proposed rule change and believes the proposal is consistent with the requirements of Section 15A(b) of the Act⁷ and the rules and regulations thereunder applicable to a national securities association. Specifically, the Commission believes the proposal is consistent with Sections 15A(b)(6) and 15A(b)(11) of the Act⁸ which require, among other things, that a national securities association's rules be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, facilitate transactions in securities, produce fair and informative quotations, prevent fictitious or misleading quotations, and promote orderly procedures for collecting, distributing, and publishing quotations.⁹

Under current Nasdaq practice, market makers are permitted to enter and adjust their first quotations for IPO

securities during a pre-trading, quotation-only time period that lasts five minutes. Nasdaq created this quotation-only time period to facilitate the opening of trading for IPOs. Previously, when an IPO was authorized for trading on Nasdaq, market makers were permitted to immediately and simultaneously enter quotations and trade on the subject security.¹⁰

The Commission recognizes that it may be difficult at times to accurately gauge interest in an IPO, and that as a result, the opening of secondary market trading for Nasdaq IPO securities may be subject to increased volatility. As Nasdaq notes, such excessive volatility could impede the smooth functioning of the Nasdaq market during the initial trading of IPOs to the detriment of all market participants, including public investors.

The Nasdaq proposal was designed to address the increased volatility associated with the opening of IPOs for secondary market trading on Nasdaq. The proposal would extend the current five minute pre-trading quotation period for all IPOs to fifteen minutes, and provide the potential for an additional fifteen minute pre-trade quotation period if an IPO issue was locked or crossed at the conclusion of the first fifteen minute period. The Commission believes that this additional time should assist market participants in gauging the likely interest in an IPO and adjusting their quotes accordingly.

Pursuant to Section 19(b)(2) of the Act,¹¹ the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. The Commission recognizes that increased investor demand for the securities of high-technology companies, especially those offered through IPOs, may be contributing to greater volatility of Nasdaq securities. The Commission believes it is important that before trading in an IPO security commences, Nasdaq market makers be provided sufficient time to determine an appropriate opening price that accurately reflects market interest in the IPO security. Setting a more accurate opening price for an IPO could help to reduce volatility in those securities as trading begins.

The Commission further believes that the availability of an additional fifteen minute quotation-only time period is an appropriate response to those instances where the market may be locked or

crossed at the conclusion of the first fifteen minute period. Finally, the Commission notes that the proposal to extend the pre-trading quotation period represents one element of Nasdaq's response to excessive volatility, and encourages Nasdaq to continue to develop additional proposals as part of its ongoing review of trading activity and Nasdaq market practices.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change, SR-NASD-98-98, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-2104 Filed 1-28-99; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9A81]

State of California

Fresno and Tulare Counties and the contiguous counties, Inyo, Kern, Kings, Madera, Merced, Mono, Monterey, and San Benito in the State of California constitute an economic injury disaster loan area as a result of extremely low temperatures and sub-freezing conditions beginning on December 20, 1998 and continuing. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on October 15, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, PO Box 13795, Sacramento, CA 95853-4795.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury number for this disaster is 9A8100.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: January 15, 1999.

Mary Kristine Swedin,

Acting Administrator.

[FR Doc. 99-2166 Filed 1-28-99; 8:45 am]

BILLING CODE 8025-01-M

⁷ 15 U.S.C. 78o-3(b).

⁸ 15 U.S.C. 78o-3(b)(6) and 78o-3(b)(11).

⁹ In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ See Securities Exchange Act Release No. 34254 (June 24, 1994), 59 FR 33808 (June 30, 1994).

¹¹ 15 U.S.C. 78s(b)(2).

¹² *Id.*

¹³ 17 CFR 200.30-3(a)(12).