

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 the file number in the caption above and should be submitted by February 24, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-2484 Filed 2-2-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40988; File No. SR-NASD-98-79]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change Relating to Issuer Responsibilities When Using the Internet; Updating MarketWatch Contact Information and Other Matters

January 28, 1999.

On October 21, 1998, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") submitted to the Securities Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NASD Rule IM-4120-1 with respect to the use of the Internet for dissemination of issuer disclosures.

The proposed rule change appeared in the **Federal Register** on December 17, 1998.³ The Commission received no comments concerning the proposed rule change. This Order approves the proposed rule change for the reasons discussed below.

I. Description of Proposal

Increased use of the Internet to provide access to corporate information for shareholders has resulted in questions regarding the timing of news releases over the Internet and the use of issuers' Internet sites as replacements for traditional dissemination of news. While Nasdaq believes that it is generally in the public interest to encourage widespread dissemination of

information to investors through the Internet, it also believes that it must maintain a level playing field for all investors, including those who do not have Internet access or who may not generally rely on the Internet as their primary source of material corporate news. Consequently, Nasdaq proposes permitting issuers to publicize news over the Internet, but only as a supplement to its ongoing requirement that news be disseminated through traditional news services. These include Dow Jones News Service, Reuters, Bloomberg Business News, Business Wire, PR Newswire, The Wall Street Journal, and *The New York Times*.⁴

Accordingly, Nasdaq is proposing to amend NASD Interpretation IM-4120-1 to state that it fully supports companies' use of Internet home pages to disseminate information to shareholders, but that the Internet must be a substitute for the dissemination of news through traditional news services. In the interests of maintaining a level playing field for all investors and to avoid situations of potential selective disclosure, the Nasdaq policy will be amended to indicate that dissemination of news over the Internet is appropriate as long as it is *not* made available over the Internet before the same information is transmitted to, and received by, the traditional news services. Furthermore, the amended policy will reiterate that issuers must still notify Nasdaq at least ten minutes prior to any release of material information to traditional news services or over the Internet, consistent with the existing policy.⁵

II. Discussion

Upon review, the Commission finds that the proposed rule change is consistent with the provisions of the Act and the rules and regulations thereunder applicable to a registered securities association. In particular, the Commission believes the proposal is consistent with Sections 15A(b)(6)⁶ and 11A(a)(1)(B)⁷ of the Act.⁸ Section 15A(b)(6) requires that the rules of an association be 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 national market system, and, in general, to protect investors and the public interest.⁹ Section 11A(a)(1)(B) recognizes that new data processing and communications techniques create the opportunity for more efficient and effective market operations. Increasing the available outlets through which material information is circulated, as proposed, increases market transparency and furthers the goals of this section.

A free and open national market system requires the timely and thorough dissemination of information to market participants. Since its advent, the Internet's popularity has grown rapidly. The Commission believes that the Internet is a viable method to disseminate information to market participants. With its relatively low cost of operation, easy accessibility, and potential for rapid dissemination, it represents an effective and timely method for issuers to disseminate information to investors and the general public. The Commission agrees with Nasdaq that the Internet is an acceptable method for issuers to communicate with investors; its use to publicize material information should promote rapid and wide-spread dissemination of Company information, specifically enhancing the openness and fairness of the national market system generally.

The Commission further notes that the proposed rule change should adequately protect investors who rely on traditional news services to obtain information on issuers. As proposed, issuers who are required to disseminate information under NASD rules must use Nasdaq-approved traditional news services regardless of whether the issuers post the information on the Internet. This should protect investors who do not have Internet access or who still rely on traditional news services for their corporate news. In addition, the proposal provides that material news may not be released on the Internet prior to its receipt by traditional news services thereby helping to ensure that material news is not selectively disseminated.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Rel. No. 40771 (December 10, 1998), 63 FR 56055.

⁴ A complete list of appropriate news services is available from Nasdaq's Market Watch Department by telephone 1-800-537-3929 or (301) 590-6411. Between 6 p.m. and 8 a.m. Eastern Time, voice mail messages may be left on either number.

⁵ In addition, this Order also approves several technical corrections to cross references contained in NASD Rule 4120 and IM-4120-1, as well as eliminating several footnote references to an outdated phone number used to contact MarketWatch, which are contained in NASD Rules 4120, 4310, and 4320.

⁶ 15 U.S.C. 78o-3(b)(6).

⁷ 15 U.S.C. 78k-1.

⁸ In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ 15 U.S.C. 78s(b)(2).

proposed rule change (SR-NASD-98-79) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-2536 Filed 2-2-99; 8:45am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40979; File No. SR-NYSE-99-02]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Instituting a Pilot Program Relating to the Listing Eligibility Criteria for Closed-End Management Investment Companies Registered Under The Investment Company Act of 1940

January 26, 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 January 26, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the portion of the proposal instituting a pilot program relating to the listing eligibility criteria for closed-end investment companies registered under the Investment Company Act of 1940.

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

The Exchange proposes to implement a pilot program ("Pilot") amending Section 1 of its *Listed Company Manual* ("Manual") to codify the specific eligibility listing criteria as applied to certain investment companies registered under the Investment Company Act of 1940. The proposed three-month Pilot would expire on April 29, 1999, or such earlier time as the Commission approves the Exchange's request for permanent

approval of the program.³ The text of the proposed rule change is available at the Office of the Secretary, NYSE and at the Commission.

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

In its filing with the Commission, the Exchange 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. The Exchange 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 Exchange proposed to codify a policy regarding the listing of newly organized closed-end management investment companies ("Funds"). The Exchange generally lists Funds either in connection with an initial public offering or shortly thereafter, when the Fund does not have a three-year operating history and is thus considered newly formed.

If the Fund has at least \$60 million in net assets, as evidenced by a firm underwriting commitment, the Exchange will generally authorize the listing of the Fund. In this regard, the Exchange notes that this requirement is the minimum net asset requirement for listing. The Exchange retains the discretion to deny listing to a Fund if it determines that, based upon a comprehensive financial analysis, it is unlikely that the particular Fund will be able to maintain its financial status. Any Fund with less than \$60 million in net assets will not be considered for listing.

In applying this test, the Exchange recognizes that in most cases the applicant Fund is not a traditional operating entity. Thus, it would not be possible to apply the earnings standards specified in the *Listed Company Manual* at the time of listing. Of course, Funds are subject to continued financial listing criteria, as are all NYSE-listed companies. In this regard, an exception report is generated monthly to identify companies below the Exchange's

continued listing standards. If a Fund is so identified by the Exchange's Financial Compliance Department, it will be subject to the same compliance and monitoring procedures imposed upon any other NYSE-listed company so identified.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)⁴ that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

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

The Exchange represents that the proposed rule change will not 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

The Exchange has neither solicited nor received comments on 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 self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested that the Commission find good cause, pursuant to Section 19(b)(2)⁵ of the Act, for approving the establishment of the Pilot for a three-month period ending on April 29, 1999 (or until such earlier time as the Commission grants the Exchange's request for permanent approval of the program), prior to the thirtieth day after publication in the **Federal Register**.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Telephone conversation between N. Amy Bilbija, Counsel, NYSE, and Richard Strasser, Assistant Director, Division of Market Regulation, SEC, on January 26, 1999.

⁴ 15 U.S.C. 78f(b)(5).

⁵ 15 U.S.C. 78s(b)(2).