

arguments concerning the foregoing, including whether Amendment No. 5 is 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 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 Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR-NASD-00-04 and should be submitted by April 4, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>40</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44042; File No. SR-NASD-99-66]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2, 3, and 4 by the National Association of Securities Dealers, Inc. Relating to the Implementation of Mandatory Trade Reporting for PORTAL Securities

March 6, 2001.

#### I. Introduction

On October 28, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to the implementation of mandatory trade reporting for PORTAL securities. On December 30, 1999, the

NASD filed Amendment No. 1.<sup>3</sup> The proposed rule change, including Amendment No. 1, was published for comment in the **Federal Register** on January 13, 2000.<sup>4</sup> The Commission received one comment letter regarding the proposal.<sup>5</sup> In response thereto, on April 4, 2000, the NASD filed Amendment No. 2.<sup>6</sup> On January 23, 2001, the NASD filed Amendment No. 3.<sup>7</sup> On February 22, 2001, the NASD filed Amendment No. 4.<sup>8</sup>

This order approves the proposed rule change, as amended. In addition, the Commission is approving on an accelerated basis, and soliciting comments on, Amendment Nos. 2, 3 and 4.

#### II. Description

##### A. Overview

The Nasdaq Stock Market, Inc. ("Nasdaq") operates the PORTAL Market for securities that were sold in private placements and are eligible for resale under SEC Rule 144A, adopted under the Securities Act of 1933 ("Securities Act").<sup>9</sup> The NASD is proposing to amend the rules governing The PORTAL Market ("PORTAL Rules") in the Rule 5300 Series to require that NASD members submit trade reports of secondary market transactions in

<sup>3</sup> See Letter from Suzanne Rothwell, Chief Counsel, Corporate Financing, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 29, 1999 ("Amendment No. 1").

<sup>4</sup> See Securities Exchange Act Release No. 42310 (January 3, 2000), 65 FR 2207. A correction notice was published in the **Federal Register** correcting a typographical error in the docket number on February 14, 2000. See 65 FR 7418.

<sup>5</sup> See Letter from Douglas L. Williams, Executive Vice President, Wachovia Securities, Inc., to Secretary, Commission, dated February 2, 2000.

<sup>6</sup> See Letter from Suzanne Rothwell, Chief Counsel, Corporate Financing, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated April 4, 2000 ("Amendment No. 2"). In Amendment No. 2, the NASD responded to comments made by a commenter, and submitted substantive amendments to the proposal. The substance of Amendment No. 2 is reflected throughout this order.

<sup>7</sup> See Letter from Suzanne Rothwell, Chief Counsel, Corporate Financing, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated January 18, 2001 ("Amendment No. 3"). In Amendment No. 3, the NASD revised the proposed definition of "PORTAL Debt Securities" to conform it to the definition of TRACE-eligible security approved in File No. SR-NASD-99-65. See Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001).

<sup>8</sup> See Letter from Suzanne Rothwell, Chief Counsel, Corporate Financing, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated February 16, 2001 ("Amendment No. 4"). In Amendment No. 4, the NASD made a technical amendment to the language of Rule 5350 of the PORTAL Rules and to clarify the proposed effective date for the PORTAL Rules.

<sup>9</sup> 15 U.S.C. 77(a).

PORTAL-designated equity securities through the Automated Confirmation Transaction Service ("ACT") and in PORTAL U.S. high-yield debt securities through the Trade Reporting And Comparison Entry Service ("TRACE").<sup>10</sup>

Under the proposed revisions to the PORTAL Rules, members will be required to report secondary market transactions in PORTAL equity securities through ACT, subject to certain exemptions. Members will not be required to use ACT's automated services for comparison, confirmation, and the forwarding of confirmed trades to Depository Trust Corporation ("DTC") for settlement, however, these services will remain available for members that chose to use them. There will be no public dissemination of information in trade reports submitted to the association with respect to PORTAL securities and depository-eligible Rule 144A investment grade rated debt issues.

The NASD intends to amend several of the definitions contained in Rule 5310 of the PORTAL Rules as well as the Reporting Requirements contained in Rule 5332 of the PORTAL Rules to mandate reporting of secondary market transactions in PORTAL debt and equity securities. NASD has also proposed revisions to the PORTAL Rules governing the security designation application process. As a result of these revisions, a majority of the remaining provisions will be obsolete, and the NASD proposes to delete them.

##### B. Definitions

As part of its proposal to revise the PORTAL Market, the NASD has proposed new definitions for the terms "PORTAL equity security" and "PORTAL debt security." Under the proposed definition, a PORTAL equity security will include any:

Security that represents an ownership interest in a legal entity, including but not limited to any common, capital, ordinary, preferred stock, or warrant for any of the foregoing, shares of beneficial interest, or the equivalent thereof (regardless of whether voting or non-voting, convertible or non-convertible, exchangeable or non-exchangeable, exercisable or non-exercisable, callable or non-callable, redeemable or non-redeemable).

<sup>10</sup> ACT is a system, operated by Nasdaq, that accommodates the reporting and dissemination of last sale reports for secondary market transactions in equity securities (including preferred stock issues), and provides automated comparison and confirmation services and forwards confirmed trades to DTC for settlement. TRACE is a service to be operated by Nasdaq to provide services similar to those of ACT for secondary market transactions in certain SEC registered debt and Rule 144A investment grade rated debt issues that are eligible for book-entry services at DTC.

<sup>40</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.

The definition of a PORTAL debt security is proposed to include:

All PORTAL securities that are United States dollar denominated debt securities issued by United States and/or foreign private corporations, but shall not include mortgage- or asset-backed securities, collateralized mortgage obligations, money market instruments, or municipal and municipal-derivative securities.<sup>11</sup>

The NASD has also proposed a definition for "time of execution." Under the proposal, the "time of execution" will be:

The time when all of the terms of a transaction in a PORTAL security have been agreed to that are sufficient to calculate the dollar price of the transaction and a determination has been made that the transaction is in compliance with Rule 144A or any other applicable exemption from registration under Section 5 of the Securities Act.

According to this definition, the time for reporting a transaction in a PORTAL equity security or a PORTAL debt security will be the time of execution. The time of execution will be the time included in transaction reports.<sup>12</sup>

The NASD has proposed to revise the definition of "PORTAL Market System" to mean one or more computer systems that may be designated by the NASD to accept trade reports or to display transaction, quotation or other information on PORTAL securities. Both ACT and TRACE will be PORTAL Market systems under this definition.

The NASD also proposed to revise the definition of "PORTAL transaction report" to mean a report of a transaction in a PORTAL security submitted by a member through a designated PORTAL Market system.<sup>13</sup>

The PORTAL Rules contain a number of definitions that relate to the initial concept for the market, which originally included reporting, comparison, and settlement of PORTAL trades directly through a PORTAL Market computer. The NASD believes that these rules no longer have any application under the proposed change to the PORTAL Market, and therefore has proposed that the following terms and definitions be deleted in their entirety: "PORTAL account instruction system," "PORTAL clearing organization," "PORTAL clearing system," "PORTAL depository organization," "PORTAL depository system," "PORTAL Market information," "PORTAL non-participant

report," "PORTAL surveillance report," and "Short Sale."

In addition, based on the proposed changes to the PORTAL Market, the NASD believes it is no longer necessary to qualify members as "PORTAL dealers" or "PORTAL brokers" or to qualify investors as "PORTAL qualified investors" for the purpose of entering quotations and viewing quotations in the PORTAL Market. Accordingly, the NASD has proposed to delete the definitions of: "PORTAL broker," "PORTAL dealer," "PORTAL participant," and "PORTAL qualified investor."

Moreover, the NASD proposed to delete the term "execution" as it believes it would be inconsistent with the proposed definition of the term "time of execution."

### C. Reporting Requirements

In place of the current reporting requirements, the NASD has proposed that two new provisions be adopted in Rule 5332 which would obligate members to report secondary market transactions in PORTAL equity and PORTAL debt securities through ACT and TRACE, respectively.

#### 1. Transaction Which Must Be Reported

Proposed Rule 5332(a) would require that all secondary market "transactions"<sup>14</sup> in PORTAL equity securities be reported through ACT, subject to certain exceptions discussed below. Members would be permitted, but not required, to use the confirmation, comparisons, and settlement features of ACT with respect to secondary market transactions in PORTAL equity securities.<sup>15</sup>

Proposed Rule 5332(b) would require that all secondary market transactions in PORTAL debt securities be reported to the TRACE in accordance with the NASD Rule 6200 Series, which include exceptions from reporting as discussed below.<sup>16</sup> All secondary market transactions in PORTAL debt securities will be required to comply with all

<sup>14</sup> The definition of the term "transaction" includes any purchase or sale of a PORTAL security and is only intended to refer to secondary market transactions.

<sup>15</sup> The NASD is not amending the definition of an "ACT eligible security" to include PORTAL equity securities. Instead, as set forth in Securities Exchange Act Release No. 40424 (Sept. 10, 1998), 63 FR 49623 (Sept. 16, 1998), the definition of an "ACT eligible security" will continue to be interpreted to include all securities designated as PORTAL securities to the extent transactions in such securities are voluntarily submitted to ACT solely for comparison, confirmation, and/or clearance and settlement.

<sup>16</sup> This rule was approved as part of the TRACE proposal. See note 7, *supra*.

TRACE Rules, including rules mandating reporting and comparison.

The NASD proposed to renumber subparagraph (d) of Rule 5332 subparagraph (c), and to delete extraneous language from the Rule. The NASD intends that the Rule, as amended, will clarify that members are obligated to report the resale of PORTAL securities:

- Into the U.S. public market under the exemption provided by SEC Rule 144; and
- From the U.S. private market to an offshore market or from an offshore market to the U.S. private market.

However, transaction in PORTAL securities that have been sold offshore under the exemption from registration provided by Regulation S, where the resale transaction is entirely offshore, are not reportable.

#### 2. Exceptions to Reporting Requirements

Under the proposal, the exceptions to the transaction reporting obligations for PORTAL equity and PORTAL debt securities would be the same. These exceptions are contained in NASD Rule 6320(e)(1)-(4), which was approved as part of the NASD's TRACE proposal.

#### 3. Submission of Transaction Reports

Under the proposal, PORTAL transaction reports for equity securities must be submitted to ACT no later than 6:30 p.m. Eastern Time, or by the end of the ACT reporting session that is in effect at the time. Transaction reports for PORTAL debt securities must be submitted within the time frame proposed for debt securities subject to mandatory reporting through TRACE.

#### 4. PORTAL Market Fees

Under the proposal, members submitting trade reports to ACT with respect to secondary market transactions for PORTAL equity securities would be subject to the same fees currently imposed on other members reporting through ACT under the NASD Rule 7000 Series.<sup>17</sup>

### D. Designation of PORTAL Securities

NASD Rule 5321 currently requires that a PORTAL dealer or broker submit an application for designation of a security as a PORTAL security. According to the NASD, because it will not be necessary to qualify brokers and dealers as PORTAL dealers and brokers under the proposed rule change, the Association proposed to amend Rule

<sup>17</sup> The NASD proposes to delete a general provision in NASD Rule 5374 of the PORTAL Rules setting out the Association's authority to impose fees for PORTAL transactions as it is unnecessary.

<sup>11</sup> See Amendment No. 3, *supra* note 7.

<sup>12</sup> See Proposed NASD Rule 5332(a)(1).

<sup>13</sup> Previously, PORTAL transaction reports were only to be submitted by a broker/dealer qualified as a PORTAL broker or PORTAL dealer and such reports were required to be submitted within 15 minutes of the execution of the transaction.

5321(a) to permit any member of the NASD, or the issuer of a security, to submit an application for designation of a security as a PORTAL security. The NASD also proposed conforming changes to Rule 5323(b) with respect to the procedures for notification to members if the designation of a PORTAL security is suspended or terminated, and to Rule 5324 (to be redesignated Rule 5323) to require that the application fee for PORTAL designation be paid by the issuer or member submitting the application.

In addition, the NASD proposed a requirement that any applicant seeking PORTAL designation promptly advise the NASD when the issuer has submitted a registration statement to the Commission to register: (1) The resale of a PORTAL security; (2) securities to be exchanged for a PORTAL security; or (3) securities into which the PORTAL security is exchangeable or convertible.<sup>18</sup> In addition, the applicant would be required to advise the NASD of the effectiveness of the registration statement. The NASD intends this provision to provide information to the NASD that will allow it to delete a PORTAL security from its list of current PORTAL securities when the registration statement is declared effective. At that point, any resale of a former-PORTAL designated security will be accomplished through the registered securities.

Proposed Rule 5321(c) would also require an applicant to advise the NASD when a CUSIP or CINS security identification is assigned at issuance to the PORTAL security or any tranche of a PORTAL security issue. The NASD intends this provision to ensure that it is advised of additional CUSIP numbers as they are assigned in a timely manner.<sup>19</sup> The NASD believes that this information will facilitate its ability to accept trade reports of secondary market transactions in PORTAL securities. In order to provide flexibility in the operation of this provision, the NASD proposed that the issuer may provide these undertakings in lieu of a member-applicant.<sup>20</sup>

The NASD further proposed that the qualification requirements for PORTAL securities in Rule 5322(a)(3) be amended to require that a PORTAL security be a "depository eligible security." The definition of this term in Rule 11310 would operate to include

only securities with book-entry services at DTC. Consistent with this change, NASD also proposes to amend Rule 5322(a)(4) to delete the requirement that PORTAL securities be in certificated form.

The NASD proposes to relocate that part of Rule 5360 that sets forth the right of an aggrieved person to seek review by the NASD of a denial, suspension or termination of PORTAL-designation status to Rule 5324.

#### *E. Deletion of Obsolete Provisions*

The NASD is proposing to delete a large number of provisions of the PORTAL Rules. In addition to the deletions discussed above, the NASD proposes to delete other provisions in their entirety as obsolete under the proposed revised rules.

##### 1. Registration of PORTAL Dealers, Brokers, and Qualified Investors

The original concept of the PORTAL Market was that approved broker/dealers and investors would trade in a closed system. The NASD proposes to delete the remnants of this concept that remain in the PORTAL Rules. Thus, it is proposed that the following rules be deleted that would register PORTAL dealers, brokers, and qualified investors (together, PORTAL participants): Rules 5338, 5339, 5340, 5350, 5351, 5352, and 5353. The NASD also proposes to delete Rule 5360, which includes the procedures for appeal by a PORTAL participant of any denial, suspension or termination of its registration. The section of Rule 5360 that related to appeal rights regarding the designation of a PORTAL security has been incorporated into proposed Rule 5324.

The NASD has proposed that the majority of the current provisions contained in Rule 5332, which require that PORTAL dealers and brokers report transactions in PORTAL securities, be deleted. The NASD also proposes to delete other provisions that relate to the initial concept, for the reporting, comparison, and settlement of PORTAL trades directly through a PORTAL Market computer system. These include Rules 5333 and 5337, which set out the requirements for PORTAL trade comparison and settlement, and Rule 5334 which sets out the contents of a required trade report and the manner of reporting and requires that PORTAL trade reports be disseminated. Also proposed to be deleted are Rules 5335 and 5336, which required broker/dealers that were not approved as PORTAL dealers or brokers to submit a separate trade report and required another trade report (called the "Surveillance Report") for reporting the

initial sale to a QIB by the broker/dealer under SEC Rule 144A.

##### 2. Quotations, Trading, Uniform Practice

The PORTAL Rules currently contain a large number of obsolete provisions that were intended to regulate the quotation and trading of PORTAL securities between PORTAL participants on a PORTAL-designated computer system. The NASD proposes to delete these provisions. Specifically, the NASD proposes to delete: the provisions that relate to the quotation of PORTAL securities (Rules 5372, 5373, 5375, 5376, and 5377) and uniform practice (Rules 5378, 5379, and 5380).<sup>21</sup>

##### *G. Examinations and Surveillance*

Surveillance of PORTAL equity securities will be encompassed within parts of the current surveillance procedures for transaction reporting into ACT. Surveillance of transaction reports submitted with respect to PORTAL debt securities will be encompassed within the surveillance plan for TRACE.

### III. Summary of Comments

The Commission received one comment letter on the proposed rule change.<sup>22</sup> The Commenter expressed opinions on four aspects of the proposal: the effect the proposed changes may have on the liquidity of securities eligible for resale under SEC Rule 144A, the continued existence of the PORTAL Market, proposed Rule 5321(c) relating to who is responsible for notifying the NASD when a registration statement for a PORTAL security has been filed with the Commission, and the effect of the proposed deletion of Rule 5392.

The Commenter first noted that under proposed Rule 5333, NASD members would be prohibited from entering quotations in PORTAL securities into any inter-dealer quotation medium.<sup>23</sup> The Commenter stated that this prohibition is not required by Rule 144A, or any other existing federal securities law, that the prohibition would eliminate virtually all liquidity in the market for high yield 144A eligible securities and that Rule 144A

<sup>21</sup> The NASD's Uniform Practice Code has been amended to apply to resales of restricted securities as defined in Rule 144(a)(3) under the Securities Act. See Securities Exchange Act Release No. 38491 (April 9, 1997), 62 FR 18665 (April 16, 1997).

<sup>22</sup> See note 5, *supra*.

<sup>23</sup> Pursuant to Securities Act Rule 144A, broker/dealers are permitted to enter quotations in an inter-dealer quotation system as long as the offer is made to QIBs or persons whom dealers reasonably believed to be QIBs. The proposed NASD rule would prohibit the entry of quotations, even if the broker/dealer desires to offer a security to a QIB.

<sup>18</sup> See Proposed NASD Rule 5321(c).

<sup>19</sup> Similar to SEC registered offerings, in some cases a private placement will describe a debt issuance that will be done in tranches over a period of time. Each tranche is assigned a different CUSIP number as it is issued.

<sup>20</sup> See Proposed NASD Rule 5321(c).

does not prohibit broker/dealer from entering quotations in an inter-dealer quotation system as long as the offer is made only to QIBs or dealers reasonably believed to be QIBs. In response to the Commenter, the NASD acknowledged that this was an unintended effect of the proposed Rule, and amended the proposed rule to delete the prohibition.<sup>24</sup>

Next, the Commenter concurred with the NASD's contention that the PORTAL Market has not developed as anticipated. The Commenter stated that while the security market in 144A securities has flourished over the last 10 years, the market-related activities of the PORTAL market have not. The commenter opined that this is because institutional investors have found alternative trading venues that offer greater liquidity than the PORTAL Market. The Commenter therefore recommended that the NASD eliminate the PORTAL Rules altogether, and incorporate any rules necessary for the surveillance of resale of Rule 144A securities into the ACT rules.

The NASD responded to this comment by explaining that it believes that the specific "PORTAL" identity for certain Rule 144A securities is necessary in order for members to properly distinguish between the obligations imposed by the ACT and TRACE Rules with respect to Rule 144A/Non-PORTAL and Rule 144A/PORTAL securities, and therefore does not feel it is appropriate to eliminate the PORTAL Rules in their entirety.

The Commenter next expressed concern regarding proposed Rule 5321(c). This proposed rule would require that a broker/dealer-applicant, or the issuer of the security, advise the NASD if the issuer files a registration statement with the Commission, or if a PORTAL Security is assigned a CUSIP or CINS number. While the Commenter recognized the NASD's need to be made aware of these activities, it suggested that instead of requiring the broker/dealer or the issuer to notify the NASD if a registration statement is filed, the NASD should place this burden on the lead underwriter of the security. The Commenter reasoned that the broker/dealer-applicant may no longer be active in the security at the time a registration statement is filed, and therefore, the burden would be more properly placed on the lead underwriter as he or she would be expected to know if and when such a filing were made.

In response to this comment, the NASD explained that proposed Rule 5321(c) would not apply to all Rule

144A securities. Rather, the Rule would apply only to PORTAL-designated securities that are assigned a CUSIP number at issuance and have book-entry services at the DTC.<sup>25</sup> The NASD represented that it was "exceedingly rare for the NASD to receive an application for designation of a PORTAL Security subsequent to the issuance of the security."<sup>26</sup> The NASD explained that the proposed Rule was intended to eliminate the requirement that dealers and brokers register as "PORTAL" dealers and brokers, and to permit any broker/dealer or the issuer to submit an application for designation of a security in the PORTAL Market.<sup>27</sup>

Lastly, the Commenter questioned the NASD's proposed deletion of current Rule 5392. The Commenter explained that if the Rule were deleted, an important exemption from the NASD rule that requires that broker/dealers obtain quotations from three dealers (or all dealers if three or less exist) to determine the best inter-dealer market for a security before executing a trade, even in circumstances where the broker/dealer already knows of a QIB interested in buying the security. The Commenter stated that this requirement is not necessary for Rule 144A Securities because the QIBs to whom these securities are sold generally know as much about the markets and the values of the securities as the dealers in those securities. The Commenter opined that the imposition of the aforementioned requirement would be a "strong incentive for dealers to withdraw most or all of the capital they currently have committed to securities eligible for resale under Rule 144A."

In response to these comments, the NASD has proposed to retain current Rule 5392 and renumber the provision as Rule 5350.<sup>28</sup>

#### IV. Discussion

After carefully considering all of the comments, the Commission finds, for the reasons discussed below, that the proposed rule change is consistent with the Act and the rules and regulations applicable to the NASD. In particular, the Commission finds that the proposal is consistent with the requirements of section 15A(b)(6) and (11), and 11A(a)(1)(C) of the Act.<sup>29</sup>

Section 15A(b)(6) requires that the rules of a registered national securities association be designed to prevent

fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Section 15A(b)(11) requires that the rules of a registered national securities association include rules governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange, and the person to whom such quotation may be supplied. These rules must be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations. In Section 11A(a)(1)(C)(iii), Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations and transactions in securities.

The Commission recognizes that the PORTAL Market has not developed as originally envisioned by the NASD. Over the last ten years, despite the NASD's efforts to encourage use of the PORTAL Market as a trading venue for Rule 144A securities, currently, its only function is reviewing whether issues of privately placed securities meet the eligibility requirements of Rule 144A. The instant rule filing represents the NASD's attempt to revitalize the Market by paring down its rules and regulations regarding who can trade PORTAL securities, and clarifying the requirements for reporting transactions involving PORTAL securities.

The Commission believes that the proposed rule change will significantly simplify the PORTAL Market specifically in that members will only be required to report secondary market transactions in PORTAL equity securities through ACT. Members will not be required to use ACT's automated services for comparison, confirmation, and the forwarding of confirmed trades to DTC for settlement and may use other systems that offer greater liquidity and incentives to trade Rule 144A securities. Also, the proposed rule change eliminates the requirement that those using the PORTAL Market receive designation as "PORTAL" brokers, dealers or investors. All NASD members

<sup>25</sup> See Amendment No. 2, *supra* note 6.

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

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

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

<sup>29</sup> 15 U.S.C. 78o-3(b)(6) and (11), and 15 U.S.C. 78k-1(a)(1)(C).

<sup>24</sup> See Amendment No. 2, *supra* note 6.

and issuers will now have access to the PORTAL Market. The Commission believes that this simplification and expansion of access will serve to remove impediments to the Market, and will help to perfect the mechanics of the Market in accordance with the goals stated in section 15A(b)(6).

The proposed Rules also make clear exactly what information is required to be reported with regard to PORTAL Securities, as well as, the party who is expected to do the reporting. By implementing clear and concise standards for reporting, the Commission believes that there will be less opportunity for fraudulent and manipulative practices. As such, the proposed Rules are consistent with sections 15A(b)(6) and 15A(b)(11).

The Commission believes that the overall changes to the PORTAL Market proposed by the NASD will assure that brokers, dealers and qualified investors will continue to have ready access to quotations in Rule 144A securities. Although the NASD originally proposed to prohibit members from entering quotations in PORTAL securities in electronic communication networks or other inter-dealer quotation markets, it recognized that this prohibition might have a negative effect on liquidity in the market for high yield Rule 144A eligible securities, and withdrew the prohibition. The Commission believes that the decision to withdraw the prohibition was appropriate and consistent with section 11A(a)(1)(C)(iii) in that it assures the availability to brokers, dealers, and investors of information with respect to quotations and transactions in securities.<sup>30</sup>

The Commission reminds broker/dealers that offers and sales of Rule 144A eligible securities that are made in reliance on Rule 144A must comply with the conditions of Rule 144A. This includes the requirement that offers of securities under Rule 144A, through an inter-dealer quotation system or otherwise, must be made only to a QIB or to an offeree that the seller reasonably believes is a QIB.

In sum, the Commission believes that the proposal is consistent with the Commission's efforts to increase secondary market liquidity in restricted securities eligible to be sold in reliance on Rule 144A, while providing appropriate controls to protect against violations of the federal securities laws.

#### V. Amendment Nos. 2, 3 and 4

The Commission finds good cause for approving Amendment Nos. 2, 3 and 4 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 2, the NASD proposed to delete proposed Rule 5333, which would have prohibited members from entering quotations in any PORTAL security in any electronic communication network or other inter-dealer quotation system. The NASD explained that this prohibition was not necessary to fulfill the purpose of the rule filing, and could have the unintended effect of reducing liquidity in PORTAL securities.

Also, the NASD proposed to retain current Rule 5392, which it had planned to delete in the original filing, and renumber it Rule 5350. The NASD explained that this Rule was needed to provide clarity regarding the application of the NASD Conduct Rules to transactions in PORTAL securities.

The Commission believes that the changes proposed in Amendment No. 2 strengthen and clarify the proposed rule change, and provide additional benefits to investors. Therefore, the Commission finds that granting accelerated approval to Amendment No. 2 is appropriate and consistent with sections 15A(b)(6), (11) and 19(b)(2) of the Act.<sup>31</sup>

Amendment No. 3 revises the definition of "PORTAL Debt Securities" contained in NASD Rule 5310(e) in order to conform it to the amended definition of "TRACE-eligible securities."<sup>32</sup> The definition of TRACE-eligible securities was previously approved.<sup>33</sup> Accordingly, the Commission believes that there is good cause, consistent with Sections 15A(b)(6) and 19(b)(2) of the Act<sup>34</sup> to approve Amendment No. 3 to the proposal on an accelerated basis as Amendment No. 3 will make the two sets of rules consistent, thus aiding compliance with the rules.

Finally, the Commission believes that it is appropriate to grant accelerated approval to Amendment No. 4. In Amendment No. 4, the NASD proposed effective dates for the amended PORTAL Rules. The NASD proposed that all proposed amendments to the PORTAL Rules be effective upon the date of approval of this proposed rule change with the following exceptions:

(1) The reporting requirements for PORTAL equity securities will be

effective three months after the issuance of a Notice to Members by the Association; and (2) the reporting requirements for PORTAL debt securities will be effective on a date announced in a subsequent Notice to Members regarding implementation of TRACE Rules. The Commission believes that these time frames are reasonable and should give members adequate time to prepare for the revised reporting requirements. Other changes effected by Amendment No. 4 are technical in nature and were added for clarification only.

For these reasons, the Commission finds good cause, consistent with sections 15A(b)(6) and 19(b)(2) of the Act,<sup>35</sup> to accelerate approval of Amendment No. 4 to the proposed rule change.

#### Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 2, 3 and 4, 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 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-99-66 and should be submitted by April 4, 2001.

#### VII. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.

*It is Therefore Ordered*, pursuant to section 19(b)(2) of the Act,<sup>36</sup> that the proposed rule change (SR-NASD-99-66), as amended be and hereby is approved.<sup>37</sup>

<sup>31</sup> 15 U.S.C. 78o-3(b)(6), (11) and 78s(b).

<sup>32</sup> See Amendment No. 4 to SR-NASD-99-65, *supra* note 7.

<sup>33</sup> See *id.*

<sup>34</sup> 15 U.S.C. 78o-3(b)(6) and 78s(b).

<sup>35</sup> 15 U.S.C. 78o-3(b)(6) and 78s(b).

<sup>36</sup> 15 U.S.C. 78s(b)(2).

<sup>37</sup> Within 60 days of the date of this order, the NASD will circulate a Notice to Members

<sup>30</sup> In approving the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>38</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-6277 Filed 3-13-01; 8:45 am]

**BILLING CODE 8010-01-M**

## **SMALL BUSINESS ADMINISTRATION**

### **[Declaration of Disaster #3320, Amdt. 1]**

#### **State of Washington**

In accordance with a notice received from the Federal Emergency Management Agency, dated March 6, 2001, the above-numbered Declaration is hereby amended to include Grays Harbor and Snohomish counties in the State of Washington as disaster areas due to damages caused by the earthquake on February 28, 2001.

In addition, applications for economic injury loans from small businesses located in Skagit County may be filed until the specified date at the previously designated location. Any counties contiguous to the above named primary counties and not listed here have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is April 30, 2001 and for economic injury the deadline is November 30, 2001.

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

Dated: March 8, 2001.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 01-6305 Filed 3-13-01; 8:45 am]

**BILLING CODE 8025-01-P**

## **SOCIAL SECURITY ADMINISTRATION**

### **Statement of Organization, Functions and Delegations of Authority**

This statement amends Parts S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Notice is given that Chapter S is being amended to elevate the Office of the Deputy Commissioner of Social Security (SA) to an independent component within the Office of the Commissioner and to delineate the functional responsibilities

announcing the approval of the proposal. Trade reporting obligations for PORTAL Equity Securities will be effective three months after the Notice to Members is published. Trade reporting obligations for PORTAL Debt Securities will be effective in accordance with the implementation schedule set out in the TRACE approval order. See note 7, *supra*.

<sup>38</sup> 17 CFR 200.30-3(a)(12).

of that Office. The new material and changes are as follows:

Section SA.10 *The Office of the Commissioner*—(Organization):

Delete:

B. The Office of the Deputy Commissioner of Social Security (SA). Establish:

B. The Office of the Deputy Commissioner of Social Security (SAP).

Section SA.20 *The Office the Commissioner*—(Functions):

Delete in its entirety:

B. The Deputy Commissioner of Social Security (SA).

Establish:

B. The Deputy Commissioner of Social Security (SAP) assists the Commissioner in carrying out his/her responsibilities and performs other duties as the Commissioner may prescribe. As the agency's chief operating officer sets direction and oversees, through subordinate functional Deputy Commissioners, all aspects of the Agency's daily operations; continuously monitors and evaluates the Agency's performance and resource utilization; ensures that the components complete major functions and initiatives effectively, efficiently and timely; and communicates regularly with senior staff regarding matters about which the Deputy Commissioner has made assignments or about which there is Agency-level impact. At the direction of the Commissioner: oversees the development of the Agency's legislative and regulatory agenda; works with functional deputy commissioners in the development of significant policy directives and regulatory packages; and handles contacts and negotiations with key officials from other Government agencies on matters involving Agency policy, programs and operations that relate to the Executive Office of the President or other governmental bodies. The Deputy Commissioner provides leadership and oversight for the administration and management of information technology resources and budget; oversees development of policy for information technology infrastructure design and implementation and the development of customer focused Internet strategy for informational and transactional service delivery; provides oversight and direction for new/major business process redesign activity, including chairing executive steering committees which address cross-component issues/activities related to start-up, operation and implementation of business process changes; facilitates the development of the Agency's communications strategy and key messages; carries out a comprehensive and continuing program of public information and public

relations, meeting with a wide array of internal and external stakeholders; chairs ad hoc internal executive steering groups to support and foster innovation and change management initiatives; carries out fully all delegation of authority functions in accordance with Agency policy; serves, as necessary, as the Agency's principal witness at congressional hearings involving Social Security related issues; serves as a member of the President's Management Council; serves as the Chair for the Executive Resources Board; and serves as the Secretary to the Social Security Board of Trustees.

The Chief Information Officer (CIO) is also located in the Office of the Deputy Commissioner but reports to the Commissioner of Social Security on statutorily defined CIO duties. In addition, the CIO will function as a key advisor to the Deputy Commissioner.

Dated: March 1, 2001.

**William A. Halter,**

*Acting Commissioner of Social Security.*

[FR Doc. 01-6320 Filed 3-13-01; 8:45 am]

**BILLING CODE 4191-02-M**

## **DEPARTMENT OF STATE**

### **[Public Notice No. 3586]**

#### **Advisory Committee on International Economic Policy; Meeting Notice**

The Advisory Committee on International Economic Policy (ACIEP) will meet from 9:00 a.m. to 12:30 p.m. on Tuesday, March 27, 2001, in Room 1107, U.S. Department of State, 2201 C Street, NW, Washington, D.C. 20520. The meeting will be hosted by Committee Chairman R. Michael Gadbaw and by Assistant Secretary of State for Economic and Business Affairs E. Anthony Wayne.

The ACIEP serves the U.S. Government in a solely advisory capacity concerning issues and problems in international economic policy. The objective of the ACIEP is to provide expertise and insight on these issues that are not available within the U.S. Government.

Topics for the March 27 meeting will be:

- The U.S. International Economic Agenda
- Focus on the Western Hemisphere
- The Role of the ACIEP

The public may attend these meetings as seating capacity allows. The media is welcome but discussions are off the record. Admittance to the Department of State Building is by means of a pre-