

August 2, 2000

Katherine A. England, Esq.
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-1001

**Re: File No. SR-NASD-00-33 - Amendment to NASD Rule 3340 to Prohibit
Publication of Quotations and Indications of Interest in a Security during a Trading
Halt: Amendment No. 1**

Dear Ms. England:

Pursuant to Rule 19b-4, NASD Regulation, Inc. proposes the following amendments to the above-numbered rule filing. We have enclosed a 3-1/2" disk containing the rule filing in Microsoft Word 7.0, as amended, to facilitate production of the Federal Register release. Proposed new language is underlined; proposed deletions are in brackets.

Amended Rule Language

- 1) Page 2 which contains the text of the proposed rule change should now read:

**3340. Prohibition on Transactions, [and] Publication of Quotations, or
Publication of Indications of Interest During Trading Halts**

No member or person associated with a member shall, directly or indirectly, effect any transaction or publish a quotation, a priced bid and/or offer, an unpriced indication of interest (including "bid wanted" and "offer wanted" and name only indications), or a bid or offer accompanied by a modifier to reflect unsolicited customer interest, in [any] [a] any security as to which a trading halt is currently in effect.

- 2) Pages 3 and 4, Section 3 - (a) Purpose, the first paragraph should now read:

The purpose of the proposed rule change is to expressly prohibit members from publishing quotations or indications of interest in a security during a trading halt. Currently, NASD Rule 3340 prohibits members from effecting a transaction in a security during a trading halt, but does not expressly state that members are prohibited from publishing quotations or indications of interest.¹ However, NASD Rules 3310² and 3320,³ respectively, state that members are required to enter only bona fide quotations and honor such quotations if presented with an order. Thus, if during a trading halt, a member that is publishing a quotation for a security is presented with a liability order for such security, the member would be faced with the choice of either honoring its quote and violating the rule prohibiting transactions in a security during a trading halt or complying with the trading halt rule but violating the Firm Quote Rule. In addition, the entry of quotations or indications of interest while there is a trading halt in a security could be potentially misleading. In order to prevent this from happening, NASD Regulation is proposing that Rule 3340 be amended to expressly state that members are prohibited from publishing quotations or indications of interest during a trading halt.

- 3) Page 4, Footnote 2, a sentence should be added at the end of the second paragraph to state:

IM-3310 also provides: “[f]or the purposes of this interpretation, the term ‘quotation’ shall include any bid or offer or any formula, such as ‘bid wanted’ or ‘offer wanted,’ designed to induce any person to make or submit any bid or offer.”

- 4) Page 5, Section 3 - (b) Statutory Basis, the first paragraph, second sentence should now read:

The NASD believes that, under the proposed rule change, preventing the publication of quotations or indications of interest during a trading halt will prevent members from [publishing quotations] seeking to trade at a time when they cannot execute a trade.

If you have any questions, please contact me at (202) 728-8056.

Very truly yours,

Kathleen A. O’Mara
Assistant General Counsel

Enclosure

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-00-33 Amendment 1)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to an Amendment to NASD Rule 3340 to Prohibit Publication of Quotations or Indications of Interest in a Security During a Trading Halt

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 , the National Association of Securities Dealers, Inc. (“NASD”), through its wholly owned subsidiary, NASD Regulation, Inc. (“NASD Regulation”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change. On

, NASD Regulation filed Amendment No.1 to the proposed rule change.³ The proposed rule change, as amended, is described in Items I, II, and III below, which Items have been prepared by NASD Regulation. 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 SUBSTANCE OF THE PROPOSED RULE CHANGE

NASD Regulation is proposing to amend Rule 3340 of the National Association of Securities Dealers, Inc. (“NASD” or “Association”), to prohibit the publication by members of quotations or indications of interest for a security during a trading halt. Below is the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Kathleen A. O’Mara, Esq., Assistant General Counsel, NASD Regulation to Katherine A. England, Assistant Director, Division of Market Regulation, SEC dated . (Amendment No. 1 added language broadening the scope of this proposed rule change.)

text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

3340. Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts

No member or person associated with a member shall, directly or indirectly, effect any transaction or publish a quotation, a priced bid and/or offer, an unpriced indication of interest (including “bid wanted” and “offer wanted” and name only indications), or a bid or offer accompanied by a modifier to reflect unsolicited customer interest, in [a] any security as to which a trading halt is currently in effect.

II. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE PURPOSE OF, AND STATUTORY BASIS FOR, THE PROPOSED RULE CHANGE

In its filing with the Commission, NASD Regulation 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. NASD Regulation 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 purpose of the proposed rule change is to expressly prohibit members from publishing quotations or indications of interest in a security during a trading halt. Currently,

NASD Rule 3340 prohibits members from effecting a transaction in a security during a trading halt, but does not expressly state that members are prohibited from publishing quotations or indications of interest.⁴ However, NASD Rules 3310⁵ and 3320⁶, respectively, state that members are required to enter only bona fide quotations and honor such quotations if presented with an order. Thus, if during a trading halt, a member that is publishing a quotation for a

⁴ The Commission may impose trading suspensions in the United States securities markets under Section 12(k) of the Act. See 15 U.S.C. 78l - 12(k).

NASD Rule 4120 provides that Nasdaq may halt trading: (1) in the over-the-counter market of a security listed on Nasdaq to permit the dissemination of material news; or (2) in the over-the-counter market of a security listed on a national securities exchange during a trading halt imposed by such exchange to permit the dissemination of material news; or (3) by (i) Consolidated Quotation System (“CQS”) market makers in a CQS security because of an order imbalance or influx (“operational trade halt”); or (ii) Nasdaq market makers in a security listed on Nasdaq, when the security is a derivative or component of a CQS security and a national securities exchange imposes an operational trading halt in that CQS security; or (4) in an American Depositary Receipt (“ADR”) or other security listed on Nasdaq, when the Nasdaq-listed security or the security underlying the ADR is listed on or registered with a national or foreign securities exchange or market, and the national or foreign securities exchange or market, or regulatory authority overseeing such exchange or market, halts trading in such security for regulatory reasons; or (5) in a security listed on Nasdaq when Nasdaq requests from the issuer information relating to: (i) material news; (ii) the issuer’s ability to meet Nasdaq listing qualification requirements, as set forth in NASD Rule 4300 and 4400 Series; or (iii) any other information which is necessary to protect investors and the public interest. See also Securities Exchange Act Release No. 42806, 65 FR 34518 (May 22, 2000), which establishes Nasdaq’s trade and quote halt authority in certain specific circumstances in securities included in the OTC Bulletin Board Service (“OTCBB”) and Notice to Members 99-69 soliciting comments on whether NASD Regulation should have authority to halt trading in non-Nasdaq, non-OTCBB, over-the-counter securities under certain circumstances.

⁵ NASD Rule 3310 states that: [n]o member shall publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports . . . to quote the bid price or asked price for any security, unless such member believes that such quotation represents a bona fide bid for, or offer of, such security

NASD Rule IM-3310 states, among other things, that: [i]t would be inconsistent with the above provisions for a member, for itself or for any other person, to publish or circulate or to cause to be published or circulated, by any means whatsoever, any quotation for any security without having reasonable cause to believe that such quotation is a bona fide quotation, is not fictitious and is not published or circulated or caused to be published or circulated for any fraudulent, deceptive or manipulative purpose. IM-3310 also provides: “[f]or the purposes of this interpretation, the term ‘quotation’ shall include any bid or offer or any formula, such as ‘bid wanted’ or ‘offer wanted,’ designed to induce any person to make or submit any bid or offer.”

⁶ NASD Rule 3320 (“Firm Quote Rule”) states that: [n]o member shall make an offer to buy from or sell to any person any security at a stated price unless such member is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell.

security is presented with a liability order for such security, the member would be faced with the choice of either honoring its quote and violating the rule prohibiting transactions in a security during a trading halt or complying with the trading halt rule but violating the Firm Quote Rule. In addition, the entry of quotations or indications of interest while there is a trading halt in a security could be potentially misleading. In order to prevent this from happening, NASD Regulation is proposing that Rule 3340 be amended to expressly state that members are prohibited from publishing quotations or indications of interest during a trading halt.

(2) Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that, under the proposed rule change, preventing the publication of quotations or indications of interest during a trading halt will prevent members from seeking to trade at a time when they cannot execute a trade. Thus, the proposal is designed to protect investors and to insure the integrity of quotations by preventing fictitious or misleading quotations.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation 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, as amended.

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

Written comments were neither solicited nor received.

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 such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

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 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 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 [insert date 21 days from the date of publication].

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

Jonathan G. Katz
Secretary