

NASD NOTICE TO MEMBERS 97-83

Exemption From SEC Rule 15c2-11 For Certain Securities Delisted From Nasdaq

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

In light of the recent approval of the new and increased listing standards for The Nasdaq Stock MarketSM (Nasdaq[®]), the Securities and Exchange Commission (SEC) has again provided an exemption from the filing requirements of SEC Rule 15c2-11 for certain securities that could be delisted as a result.¹ The exemption will permit broker/dealers to immediately publish quotations in the OTC Bulletin Board[®] (or any other quotation medium including National Quotation Bureau Pink Sheets) for those securities that are delisted from Nasdaq for failure to comply with the new initial listing and maintenance requirements. This *Notice* outlines the exemption and explains the procedures to be followed.

Questions concerning this *Notice* may be directed to Andrew S. Margolin, Senior Attorney, The Nasdaq Stock Market, Inc., at (202) 728-8869. Members seeking the exemption should contact Market Operations at (203) 375-9609, as discussed below.

Background

On August 22, 1997, the SEC approved a proposed rule change to revise the initial listing and maintenance criteria for The Nasdaq Stock Market.² The proposed rule change strengthens both the quantitative and qualitative standards for issuers listing on Nasdaq by: (1) eliminating the alternative to the \$1 minimum bid price requirement; (2) extending corporate governance standards to issuers listed on the Nasdaq Small-Cap MarketSM; (3) increasing the quantitative standards for both the SmallCap Market and Nasdaq National Market[®]; and (4) implementing a "peer review" requirement for auditors of Nasdaq-listed companies.

The new standards apply retroactively to issuers applying for initial list-

ing on Nasdaq after the March 3, 1997, filing of the rule change. Those issuers will have until November 20, 1997, to meet the new initial listing criteria. In addition, effective February 23, 1998, all issuers on Nasdaq will have to comply with the new maintenance criteria. As a result of the new and increased standards, it is expected that a number of companies listed on the Nasdaq National Market and SmallCap Market may be unable to comply and, thus, may eventually be subject to delisting in accordance with National Association of Securities Dealers, Inc. (NASD[®]) rules and procedures of Nasdaq.³

Nasdaq believes it is extremely important that issuers and their shareholders are not unduly disadvantaged in the event that any particular security is delisted for failure to comply with the new initial listing and maintenance standards. NASD member firms may continue to quote in the OTC Bulletin Board a security that is ultimately delisted as a result of a failure to meet the revised listing standards. In this context, the OTC Bulletin Board provides a viable and meaningful alternative ensuring continued liquidity and transparency in the market for a security after it is delisted.

To facilitate a smooth transition of a delisted security into the OTC Bulletin Board, however, Nasdaq obtained an exemption to Exchange Act Rule 15c2-11 to permit market makers who have been quoting the security while listed on Nasdaq, to continue quoting the security in the OTC Bulletin Board without interruption immediately following delisting. Rule 15c2-11 would otherwise require a broker/dealer to compile and review specified information about the issuer and the security before the firm publishes a quotation, and to demonstrate compliance with Rule 15c2-11 by submitting a Form

211 to the NASD pursuant to NASD Rule 6740 at least three business days before the quotation is published. Hence, a delay of several days would occur between the effectiveness of a Nasdaq delisting and the initiation of quotations for that security in the OTC Bulletin Board or another quotation medium.⁴ Immediate inclusion in the OTC Bulletin Board continues to be consistent with the views of the SEC and is again necessary to implement the revised listing standards recently adopted by Nasdaq.

Conditions Of The Exemption

The exemption is available regardless of when any issuer is ultimately delisted under the new standards, provided that all of the following conditions are satisfied:

- (1) the security's delisting from Nasdaq must be attributable solely to non-compliance with Nasdaq's initial listing or maintenance standards, as revised by the approval of the proposed rule change contained in Exchange Act Release No. 38961⁵;
- (2) the security must have been quoted continuously in Nasdaq during the 30 calendar days preceding its delisting from Nasdaq, exclusive of any trading halt not exceeding one day to permit the dissemination of material news concerning the security's issuer;
- (3) the issuer must not be in bankruptcy;
- (4) the issuer must be current in all of its periodic reporting requirements pursuant to Section 13(a) or 15(d) of the Exchange Act;

(5) a broker/dealer relying upon this exemption must have been a market maker registered with Nasdaq in the security being delisted during the 30-day period preceding the delisting; and

(6) the exemption extends only to classes of securities listed on Nasdaq.⁶

The foregoing conditions effectively limit the requested exemption to the securities of companies that are not in bankruptcy, that are complying with the SEC's financial disclosure requirements, and that would have remained eligible for listing on Nasdaq under the former standards. If these conditions cannot be satisfied, the security's transfer to a quotation medium such as the OTC Bulletin Board will be conditioned on full compliance with Rule 15c2-11 and NASD Rule 6740.

Procedures For The Exemption

The announcement of a delisting of a particular security is made no earlier than the close of trading on the last day it is authorized for quotation on Nasdaq. A market maker seeking this exemption must be registered in the OTC Bulletin Board for the security **no later than the next trading day**. Market makers **cannot** register on-line in the OTC Bulletin Board for this exemption and must contact Nasdaq Market Operations. For those securities eligible for the exemption, Market Operations will attempt, where possible, to notify those market makers registered in the delisted security to provide them the opportunity to be registered on a timely basis. The responsibility to seek registration in the OTC Bulletin

Board pursuant to this exemption, however, remains with the market maker. Market Operations can be reached at (203) 375-9609.

Endnotes

¹ See letter from Nancy J. Sanow, Assistant Director, Securities and Exchange Commission, to Robert E. Aber, Vice President and General Counsel, Nasdaq, dated October 23, 1997. This exemption is similar to one obtained when the Nasdaq listing standards were last revised in 1991. See letter from Jonathan G. Katz, Secretary, Securities and Exchange Commission, to T. Grant Callery, Vice President and Deputy General Counsel, National Association of Securities Dealers, Inc., dated February 28, 1992.

² See Exchange Act Release No. 38961 (August 22, 1997) 62 FR 45895 (August 29, 1997).

³ NASD Rule 9700 Series governs the Nasdaq delisting process and sets forth the procedures by which an issuer may appeal a delisting decision.

⁴ It should be noted that the effective date of a security's delisting from the Nasdaq market is not announced by Nasdaq until after the close of trading on the last day that the security is quoted in Nasdaq.

⁵ See Exchange Act Release No. 38961 (August 22, 1997), 62 FR 45895 (August 29, 1997).

⁶ Thus, if an issuer had one class of securities listed on Nasdaq, and another class of securities traded over the counter but not on Nasdaq, only the delisted Nasdaq security would qualify for the exemption.

© 1997, National Association of Securities Dealers, Inc. (NASD). All rights reserved.