

# NASD Notice to Members 99-15

## SEC Approves Rule Amendments Limiting Quotations On OTC Bulletin Board To Reporting Securities

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### Executive Summary

On January 4, 1999, the Securities and Exchange Commission (SEC) approved amendments to National Association of Securities Dealers, Inc. (NASD®) Rules 6530 and 6540 to limit quotations on the OTC Bulletin Board® (OTCBB) to the securities of companies that report their current financial information to the SEC, banking, or insurance regulators. The text of the amended rules and the *Federal Register* version of the SEC release are attached.

Questions regarding this *Notice* should be directed to Liz Heese, Product Manager, Trading and Market Services, The Nasdaq Stock Market, Inc. at (202) 728-8191; Sara Nelson Bloom, Associate General Counsel, Office of General Counsel, The Nasdaq Stock Market®, at (202) 728-8478; or Arnold Golub, Senior Attorney, Office of General Counsel, The Nasdaq Stock Market, at (202) 728-6938.

### Background

The OTCBB is a quotation service that displays real-time quotes, last-sale prices, and volume information in domestic and certain foreign securities. Eligible securities include national, regional, and foreign equity issues; and warrants, units, and American Depositary Receipts (ADRs) not listed on any other U.S. national securities market or exchange. Although the OTCBB is operated by the NASD, it is unlike Nasdaq® or other listed markets where individual companies apply for listing and must meet and maintain strict listing standards; instead, individual brokerage firms or Market Makers initiate quotations for specific securities on the OTCBB. Currently, approximately 6,500 securities are quoted on the OTCBB.

In *Notice to Members 98-14*, the NASD requested comment on a proposed rule to amend Rule 6530 to

limit quotations on the OTCBB to the securities of issuers that are current in their reports filed with the SEC or other regulatory authority, and on a proposed rule that would amend Rule 6540 to prohibit a member from quoting a security on the OTCBB unless the issuer has made current filings. On July 20, 1998, after considering the comments received in response to *Notice to Members 98-14* and making changes to address these comments, the NASD filed a proposed rule change with the SEC to implement these proposals. On January 4, 1999, the SEC approved the proposed rule change.

### Amendments To NASD Rule 6530: Eligibility Rule

Prior to the present amendments, there was no requirement for an issuer quoted on the OTCBB to make current, publicly available reports with the SEC or other regulator. Over half the companies currently quoted on the OTCBB do not file any public reports.

The amendments to Rule 6530 provide that in order for a domestic issuer to continue being quoted on the OTCBB, the issuer must be required to make periodic filings with the SEC, or with banking or insurance regulators and be current with those filings. The NASD will affix a modifier on the security's symbol if the NASD has not received information that the report was timely filed. The addition of the modifier to the symbol, as well as any changes to the symbol necessary to accommodate the modifier, will be publicly reported on the OTCBB Daily List, which is available to Market Makers and investors through the OTCBB Web Site at [www.otcbb.com](http://www.otcbb.com). Once an issuer is delinquent in filing a required report, a security of the issuer may continue to be quoted on the OTCBB for a 30- or 60-calendar day grace period from

the due date of the report, depending on the type of issuer. Issuers who file with the SEC will be granted a 30-day grace period before they can no longer be quoted on the OTCBB; issuers who file with other regulators will be granted a 60-day grace period. After the grace period, quotations in the security of the delinquent issuer will not be permitted on the OTCBB.

### Amendment To Rule 6540: Impermissible Quotation Entries

The amendments to Rule 6540 prohibit member firms from quoting an issuer's security if the issuer does not comply with the eligibility requirements described above. Furthermore, with respect to those issuers that do not file with the SEC's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system, the amendments require a member to alert the NASD to the issuer's reporting schedule and to provide the periodic reports to the NASD, or to ensure that the required information is provided.

### Effective Date

The new requirements are effective immediately for securities not quoted on the OTCBB on January 4, 1999. Securities quoted on the OTCBB as of that date will be phased in to comply with the new Eligibility Requirement based upon the schedule below.<sup>1</sup> The delayed effectiveness of the rule is designed to enable Market Makers, investors, and issuers to take appropriate action.

Schedule	Issue Symbol
July 1999	A - AD
August 1999	AE - AM
September 1999	AN - BG
October 1999	BH - CM
November 1999	CN - EM

December 1999	EN - HH
January 2000	HI - LH
February 2000	LI - NR
March 2000	NS - RE
April 2000	RF - TH
May 2000	TI - Z
June 2000	All Banks & Insurance Companies

A list of all OTCBB securities and their eligibility status according to Nasdaq's records will be available on [www.otcbb.com](http://www.otcbb.com). If you believe the status of a security is incorrect, please e-mail the correct eligibility status, and the CIK code if the issuer is an EDGAR filer, to [otcbbfeedback@nasd.com](mailto:otcbbfeedback@nasd.com), using "OTCBB Eligibility status correction" as the subject line of the email.

### Text Of Amendments

*(Note: New text is underlined; deletions are bracketed.)*

### Rule 6530. OTCBB Eligible Securities

A member shall be permitted to quote the [The] following categories of securities [shall be eligible for quotation] in the Service:

(a) any domestic equity security that satisfies the requirements of subparagraph (1) and either subparagraph (2) or (3) or (4) below:

(1) the security is not listed on The Nasdaq Stock Market ("Nasdaq") or a registered national securities exchange in the U.S., except that an equity security [securities that are] shall be considered eligible if it:

(A) is listed on one or more regional stock exchanges, and

(B) is registered with the Commission pursuant to Section 12 of the [Securi-

(B[2]) [do] does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape [shall be considered eligible.]; and

(2) the issuer of the security is required to file reports pursuant to Section 13 or 15(d) of the Act or the security is described in Section 12(g)(2)(B) of the Act, and, subject to a thirty calendar day grace period, the issuer of the security is current in its reporting obligations, or

(3) the security is described in Section 12(g)(2)(G) of the Act and, subject to a sixty calendar day grace period, the issuer of the security is current in its reporting obligations, or

(4) the issuer of the security is a bank or savings association that is not required to file reports with the Commission pursuant to Section 13 or 15(d) of the Act and, subject to a sixty calendar day grace period, the issuer of the security is current with all required filings with its appropriate Federal banking agency or State bank supervisor (as defined in 12 U.S.C. 1813).

(b) any foreign equity security or American Depositary Receipt (ADR) that meets all of the following criteria:

(1) [prior to April 1, 1998, is not listed on Nasdaq or a registered national securities exchange in the U.S., except that a foreign equity security or ADR shall be considered eligible if it is:

(A) listed on one or more regional stock exchanges, and

(B) does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape.

(2) after March 31, 1998,] the security is registered with the Commission pursuant to Section 12 of the [Securi-

ties Exchange]Act [of 1934] and the issuer of the security is current in its reporting obligations; or the security satisfies the requirements of paragraph (a)(2) or (3) or (4) above; and

(2) the security is not listed on Nasdaq or a registered national securities exchange in the U.S., except that a foreign equity security or ADR shall [be considered eligible] meet this subparagraph (2) if it is:

(A) listed on one or more regional stock exchanges, and

(B) does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape.

(c) any equity security that [is] meets the following criteria:

(1) the security is undergoing delisting from either the New York Stock Exchange, Inc. (NYSE) or the American Stock Exchange, Inc. (AMEX) for non-compliance with maintenance-of-listing standards; and

(2) the security is subject to a trading suspension imposed by the NYSE or AMEX preceding the actual delisting; and

(3) the security satisfies the requirements of paragraph (a)(2) or (3) or (4) above.

(d) any Direct [District] Participation Program as defined in Rule 6910 that is not listed on Nasdaq or a registered national securities exchange in the U.S. and that satisfies the requirements of paragraph (a)(2) or (3) or (4) above.

(e) Paragraphs (a)(2) and (3) and (4) above will not apply with respect to any domestic equity security quoted in the Service on the effective date of this rule change until six months after that date.

To be inserted in the historical section ; amended by SR-NASD-98-51 effective Jan. 4, 1999 for newly quoted issues; effective July 4, 1999 for issues quoted on January 4, 1999.

## **Rule 6540. Requirements Applicable to Market Makers**

### **(a) No change**

### **(b) No change**

(1) Permissible Quotation Entries  
no change

(2) Impermissible Quotation Entries

(A) No member or person associated with a member shall enter into the Service a priced bid and/or offer, an unpriced indication of interest (including "bid wanted" or "offer wanted" indications), or a bid or offer accompanied by a modifier to reflect unsolicited customer interest in any security that does not satisfy the requirements of Rule 6530.

(B) No member or person associated with a member shall enter into the Service a priced bid and/or offer, an unpriced indication of interest (including "bid wanted" or "offer wanted" indications), or a bid or offer accompanied by a modifier to reflect unsolicited customer interest in any security of an issuer that does not make filings with the Commission through the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system (or in paper format, if specifically permitted by Commission Rules) unless the member:

(i) notifies the Association of the issuer of the security's schedule for the filing of all periodic reports or financial reports required pursuant to the Act or regulatory authority, respectively, and the identity of the regulatory authority with which such reports are filed, or ensures that such notice is provided; and

(ii) provides to the Association the issuer's periodic reports required pursuant to the Act, or the issuer's financial reports required by regulatory authority, prior to the expiration of the grace period described in Rule 6530(a)(3), or ensures that the required periodic reports are provided to the Association within that time period.

(3) [(2)] Voluntary Termination of Registration  
no change

(4) [(3)] More Than One Trading Location  
no change

(5) [(4)] Clearance and Settlement  
no change

(c) Compliance with Market Maker Requirements

Failure of a member or a person associated with a member to comply with this Rule may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 2110.

To be inserted in the historical section ; amended by SR-NASD-98-51 effective Jan. 4, 1999.

## **Endnote**

<sup>1</sup>This schedule is subject to change at the discretion of the NASD. The NASD will use the issue symbol as it appeared in the OTCBB quotation system on January 4, 1999, to determine where a particular issue falls in the schedule. Subsequent symbol changes will not be considered in determining an issuer's phase-in date.

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