

NASD NOTICE TO MEMBERS 98-7

Unregistered Foreign
Equities And ADRs No
Longer Eligible For
Quotation In OTC Bulletin
Board; Effective April 1,
1998

Suggested Routing

- ☒ Senior Management
- ☐ Advertising
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Executive Summary

Effective April 1, 1998, foreign equities and American Depositary Receipts (ADRs) that are not registered with the Securities and Exchange Commission (SEC) under Section 12 of the Exchange Act will no longer be eligible for quotation in the OTC Bulletin Board® (OTCBB). Ineligible securities currently quoted in the OTCBB will be removed on April 1. In addition, beginning April 1, last sale transaction reports for all eligible foreign equities and ADRs that are quoted in the OTCBB will be disseminated on a real-time basis in the same manner as domestic OTC equity securities. These rule changes do not affect the quotation of domestic securities quoted in the OTCBB.

Questions concerning this *Notice* may be directed to Adena Friedman, Director, Nasdaq® Trading and Market Services, at (202) 728-8832, or Andrew S. Margolin, Senior Attorney, Office of General Counsel, The Nasdaq Stock Market, Inc., at (202) 728-8869. Questions concerning the filing of Form 211 may be directed to OTC Compliance Unit, NASD Regulation, Inc., at (301) 208-2802.

Background

The OTC Bulletin Board is a quotation medium used by National Association of Securities Dealers, Inc. (NASD®) members to display quotes, last sale prices, and volume information for securities **not** listed on The Nasdaq Stock MarketSM or a national securities exchange (OTC Equity Securities). As originally proposed, the OTCBB sought to provide increased transparency through a centralized electronic quotation system for all such OTC Equity Securities, including foreign equities and ADRs.

Accordingly, since inception of the OTCBB, foreign OTC Equity Securities and ADRs have been potential-

ly eligible for quotation in the OTCBB without regard to their registration status under the federal securities laws. This includes foreign securities exempt from registration under Section 12 of the Exchange Act pursuant to the information-supplying exemption of SEC Rule 12g3-2(b). That SEC rule exempts from registration certain issuers if the issuer provides the SEC with whatever information the issuer must provide in its home country. The exemption is not available, however, to issuers whose securities are quoted in an "automated interdealer quotation system."¹

Preliminarily, the SEC believed that the OTCBB was not such a system for purposes of the exemption from registration, and thus NASD members have been permitted to quote foreign equity securities and ADRs in the OTCBB notwithstanding that they were not registered, or were exempt from registration under the Exchange Act, provided that market makers could only update their quotations on a limited basis. Market makers have been allowed to update their quotations in these securities only twice daily, once between 8:30 and 9:30 a.m. and once between 12:00 and 12:30 p.m. This was intended to distinguish the OTCBB from a market such as Nasdaq or an exchange, which feature continuous and firm two-sided quotations updated throughout the trading day, and which require that listed securities be fully registered with the SEC. In contrast, members have always been able to update quotations in domestic OTC Equity Securities in the OTCBB on a real-time basis.

After much consideration, however, the SEC approved rule changes earlier this year, concluding that the benefits of providing transparency for these foreign securities in the OTCBB are outweighed by the potential for including unregistered

securities on a visible U.S. market operated by a self-regulatory organization. Thus, the SEC believes that to continue the quotations for these securities in a system such as the OTCBB may be inconsistent with the full disclosure goals of the securities laws in facilitating a regulated public marketplace for unregistered foreign securities. The rule changes are attached at the end of this *Notice*. Interested parties are invited to review the full text of the Commission's findings in Exchange Act Release No. 38456.²

Summary Of Treatment Of Foreign Equities And ADRs In The OTCBB Beginning April 1, 1998

Effective Wednesday, April 1, 1998, the treatment of foreign equities and ADRs in the OTCBB will be as follows:

- Only foreign equities or ADRs registered with the SEC pursuant to Section 12 of the Exchange Act may be quoted in the OTCBB. Securities exempt from registration under SEC Rule 12g3-2(b) may not be quoted.
- Foreign equities and ADRs that are fully registered will remain eligible for quotation as of April 1 and will no longer be subject to the twice-daily update limitation. Thus, any priced quotation will no longer be indicative, but will be firm. Members will continue to be permitted to post unpriced or "name only" quotations for eligible securities.
- Prior to the April 1 effective date, more information will be provided to members to identify which securities currently quoted in the OTCBB will remain eligible. Ineligible securities will be removed from the OTCBB on Wednesday, April 1, if quoted as of the previous trading day. The quotations of eligible securities quoted in the OTCBB as of March 31 will be carried over to April 1, except

that the price and size of any priced quotation from March 31 will be deleted overnight on that night only. **Members must re-enter any priced quotation on April 1, and should be aware that any such priced quotation will become firm.** Beginning April 1, members will no longer be required to re-enter priced quotations each day for eligible foreign equities and ADRs. That is, priced entries will carry over to the next trading day, similar to domestic stocks.

- Beginning April 1, last sale transaction reports for all transactions in foreign and ADR securities quoted on the OTCBB and that are required to be reported under current NASD rules will be disseminated on a real-time basis, similar to domestic OTC Equity Securities.³

- After April 1, other foreign equities or ADRs that are eligible for quotation in the OTCBB pursuant to this rule change may be quoted in the OTCBB in accordance with existing procedures, *i.e.*, after the appropriate filing of a Form 211 pursuant to NASD Rule 6740 and SEC Rule 15c2-11, or pursuant to any applicable exemption.

Text Of Amendments

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

6530. OTCBB-Eligible Securities

The following categories of securities shall be eligible for quotation in the Service:

(a) No change

[(b) any foreign equity security or American Depositary Receipt (ADR) that is not listed on Nasdaq or a registered national securities exchange in the U.S., except those foreign equity securities or ADRs that are (1)

listed on one or more regional stock exchanges and (2) do not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape shall be considered eligible.]

(b) any foreign equity security or American Depositary Receipt (ADR) that:

(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, is registered with the Securities and Exchange Commission pursuant to Section 12 of the Securities Exchange Act of 1934 and 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.

6540. Requirements Applicable to Market Makers

(a) No change

(b) No change

(1) Permissible Quotation Entries

(A) No change

(B) A priced bid and/or offer entered

into the Service for [a domestic equity security] any security other than a Direct Participation Program must be firm up to the minimum quotation size specified in Rule 6750. This firmness requirement applies only during normal business hours, i.e., 9:30 a.m. to 4:00 p.m. Eastern Time.

(C) A priced bid and/or offer entered into the Service for a [foreign equity security, an ADR, or a] Direct Participation Program security shall be non-firm.* Moreover, a market maker is only permitted to update quotation entries in such securities twice daily, i.e., once between 8:30

a.m. and 9:30 a.m. Eastern Time, and once between noon and 12:30 p.m. Eastern Time.

Footnote To Rule Language

* The non-firm or indicative nature of a priced entry [in a foreign or ADR issue] is specifically identified on the montage of market maker quotations accessible through the Nasdaq Workstation service for this subset of OTCBB-eligible securities.

Endnotes

¹ See SEC Rule 12g3-2(b). Foreign issuers whose securities or ADRs were included in Nasdaq on or before October 5, 1983, and who are exempt from registration under Rule 12g3-2(b) are permitted to remain listed on Nasdaq. These securities are not affected by the rule changes involving the OTCBB discussed in this *Notice*.

² Exchange Act Release No. 38456 (March 31, 1997), 62 FR 16635 (April 7, 1997).

³ See NASD Rule Series 6600.

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