

SPECIAL NASD NOTICE TO MEMBERS 98-14

NASD Requests Comment
On Limiting Quotations On
Over-The-Counter Bulletin
Board (OTCBB) To
Securities Of Reporting
Issuers; **Comment Period
Expires February 16, 1998**

Suggested Routing

- ☒ Senior Management
- ☐ Advertising
- ☐ Continuing Education
- ☒ Corporate Finance
- ☐ Executive Representatives
- ☐ 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

On December 11, 1997, the National Association of Securities Dealers, Inc. (NASD[®]) Board of Governors approved the solicitation of comment on a proposed rule that would amend Rule 6530 to limit quotations on the OTC Bulletin Board[®] (OTCBB) to the securities of issuers that are current in their reports filed with the Securities and Exchange Commission (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.

Questions regarding this rule change should be directed to Sara Nelson Bloom, Associate General Counsel, Office of General Counsel, The Nasdaq Stock Market, Inc., at (202) 728-8294 or David Spotts, Senior Attorney, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8071.

Request For Comment

The NASD encourages all members and interested parties to respond to the issues raised in this *Notice*. Comments should be mailed to:

Joan Conley
Office of the Corporate Secretary
National Association of Securities
Dealers, Inc.
1735 K Street, N.W.
Washington, D.C. 20006-1500;

or e-mailed to:
pubcom@nasd.com

To be able to conclude the NASD's review within a reasonable period of time, comments must be received by **February 16, 1998**.

NASD REQUEST FOR COMMENT 98-14

Executive Summary

On December 11, 1997, the National Association of Securities Dealers, Inc. (NASD[®]) Board of Governors approved the solicitation of comment on a proposed rule that would amend Rule 6530 to limit quotations on the OTC Bulletin Board[®] (OTCBB) to the securities of issuers that are current in their reports filed with the Securities and Exchange Commission (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.

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Background And Summary

The OTC Bulletin Board is a quotation service that displays real-time quotes, last sale prices, and volume information in domestic securities. Eligible securities include national, regional, and foreign equity issues, warrants, units, and American Depositary Receipts (ADRs) not listed on any other U.S. national securities market or exchange. Unlike The Nasdaq Stock MarketSM (Nasdaq[®]) or registered exchanges where individual companies apply for listing on the market—and must meet and maintain strict listing standards—individual brokerage firms, or market makers, enter quotations for specific securities on their own behalf through the OTCBB.

The NASD has actively studied the over-the-counter market in an effort to address abuses in the trading and sales of thinly traded, thinly capital-

ized (microcap) securities. These securities are not listed on The Nasdaq Stock Market or any exchange. Rather, they trade on the OTCBB, in the “pink sheets” published by the National Quotation Bureau, Inc., and in other quotation media where there are no listing requirements. The staff is concerned with the potential for fraud in this market, given the lack of reliable and current financial information about the issuers, and the perception by the public that the OTCBB is similar to a highly regulated market, such as the registered exchanges or The Nasdaq Stock Market. These proposals were developed in an effort to balance the benefits that transparency provides with the need for public information about the issuers. While the OTCBB provides real-time quotations for these securities, and other quotation media for OTC securities do not, transactions in OTC securities are nonetheless subject to real-time last sale trade reporting. These trade reports are publicly disseminated through market data vendors on a real-time basis.

In light of the above, the NASD Board approved the solicitation of comment on rules that would:

- (i) limit quotations on the OTCBB to the securities of issuers that make current filings pursuant to the Securities Exchange Act of 1934 (Exchange Act), including depository institutions that report to their appropriate regulatory agencies pursuant to section 12(i) of the Exchange Act, registered closed-end investment companies, and insurance companies that are exempt from registration under section 12(g)(2)(G) (Eligibility Rule); and
- (ii) prohibit member firms from quoting an issuer’s security if the issuer has not made current reports with the SEC or the appropriate insurance or bank regulatory authority, and for

those issuers that do not file with the SEC's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system, require a member to provide such reports to the NASD (Ineligible Quotation Rule).

Under these rules, members will be permitted to enter quotations only for issuers that are current in their reporting obligations. With regard to most of these issuers, the filings would be made through EDGAR.¹ With regard to non-EDGAR filers, such as foreign issuers, insurance companies and depository institutions, members must provide the reports to the NASD, but the reports may be provided to the NASD by any market maker in the security.

The NASD proposes that the continued quotation of non-current issuers be permitted for a 10-calendar day grace period. If the issuer does not become current in its filing requirement during the 10 calendar days, quotations would not be permitted on the OTCBB. The NASD is also considering affixing a modifier to the symbol of the OTCBB security to reflect when an issue is not current during this 10-day grace period. The NASD encourages comment on whether 10 calendar days is an appropriate grace period.

While the proposed rule language limits the eligibility of securities issued by depository institutions to those that provide reports pursuant to Section 12(i) of the Exchange Act, we specifically request comment on whether non-Exchange Act reporting depository institutions that provide publicly available financial reports to federal banking regulators (such as Call Reports) should also be eligible for quotation.

The NASD contemplates delaying the effectiveness of the rule for up to one year for those securities quoted on the OTCBB on the rule's effective

date, in order to permit market makers, issuers, and investors to take appropriate action. The NASD encourages comment on means of accommodating the potential large influx in Exchange Act registration statements, including phasing in issuers over six, nine and 12-month staggered periods.

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Text Of Amendments

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

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 meets the following criteria:

(1) the security [that] 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[1]) is listed on one or more regional stock exchanges, and

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

(2) the security is issued by:

(A) an issuer whose securities are registered pursuant to Section 12 of the Securities Exchange Act of 1934 ("Exchange Act"),

(B) an insurance company meeting the conditions of Section 12(g)(2)(G) of the Exchange Act, or

(C) a closed-end investment company registered under the Investment Company Act of 1940; and

(3) subject to a ten calendar day grace period, the issuer of the security is current in the filing of all required periodic reports with the appropriate regulatory agency as set forth in Section 12 of the Exchange Act; is current in the filing of periodic reports pursuant to Section 13(a) or 15(d) of the Exchange Act; or is current in the reporting requirements of the Investment Company Act of 1940.

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

(1) prior to April 1, 1998, 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 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:

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

(B) meets the standards set forth in paragraph (a)(3) above, and

(C) 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 under this subparagraph (C) if it is:

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

[(B)](ii) 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 meets the standards set forth in paragraphs (a)(2) and (3) above; and

(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 meets the standards

set forth in paragraphs (a)(2) and (3) above.

(e) Paragraphs (a)(2) and (a)(3) above will not apply with respect to any security quoted in the Service on the effective date of this rule change until {insert date one year after approval of rule change}.

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 is not an OTCBB-eligible security as set forth in 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 Securities and Exchange Commission through the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system unless the member:

(i) notifies the Association of the issuer of the security's schedule for the filing of all periodic reports required pursuant to the Exchange Act 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 Exchange Act prior to the expiration of the ten calendar day 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

(4) [(3)] More Than One Trading Location

(5) [(4)] Clearance and Settlement

(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.

Endnote

¹ EDGAR (Electronic Data Gathering, Analysis, and Retrieval) is the SEC system for the receipt, acceptance, review and dissemination of documents submitted in electronic format.

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