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SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Texas Biotechnology Corporation, Common Stock, $.005 Par Value, Per Share) File No. 1–12574

June 20, 2001.

Texas Biotechnology Corporation, a Delaware corporation (''Company''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.005 par value (''Security''), from listing and registration on the American Stock Exchange (''Amex'').

The Company represents that trading in the Security began on the Nasdaq National Market, and ceased concurrently on the Amex, at the opening of business on June 19, 2001. In making the decision to withdraw the Security from listing on the Exchange, the Company considered the liquidity to be provided by its inclusion on the Nasdaq National Market and the cost of maintaining the Amex listing.

The Company stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Company's application relates solely to the Security's withdrawal from l listing on the Amex and shall affect neither its approval for listing on the Nasdaq National Market nor its obligation to be registered under section 12(g) of the Act.[3]

Any interested person may, on or before July 10, 2001, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

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[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(g).

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44451; File No. SR–NASD–99–46]

Self-Regulatory Organizations; Order Approving Proposed Rule Change, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 to the Proposed Rule Change, Filed by the National Association of Securities Dealers, Inc. Requiring Registration of Chief Compliance Officers

June 19, 2001.

I. Introduction

On November 22, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), submitted to the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change requiring registration of chief compliance officers. NASD Regulation filed Amendment Nos. 1[3] and 2[4] to the proposed rule change on December 11, 2000 and December 6, 2000, respectively.[5] The proposed rule change was published for comment in the **Federal Register** on January 4, 2001.[6] The Commission received two comment letters.[7] NASD Regulation filed Amendment No. 3 to the proposed rule change on June 15, 2001.[8] This order approves the proposed rule change, as amended, and grants accelerated approval to Amendment No. 3 The Commission is also soliciting comment on Amendment No. 3 to the proposed rule change.

II. Description of the Proposed Rule Change

The proposed rule change would require the chief compliance officer designated on Schedule A of a member's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter dated October 28, 1999, from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Divisions of Market Regulation (''Division''), Commission (''Amendment No. 1''). Amendment No. 1 clarifies that if a person becomes a chief compliance officer for the first time after the effective date of the proposed rule change for a dual New York Stock Exchange and NASD member, that person may elect to take the New York Stock Exchange Series 14 exam, and would not be required to take the NASD Series 24 exam.

[4] *See* Letter dated December 1, 2000, from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Jack Drogin, Assistant Director, Division, Commission (''Amendment No. 2''). Amendment No. 2 limits the grandfathering provision of the proposed rule change to individuals who have been designated as chief compliance officers on Schedule A of Form BD for at least two years immediately prior to the effective date of the proposed rule change and who have not been subject within the previous ten years to: (1) Any statutory disqualification as defined in section 3(a)(39) of the Act; (2) a suspension; or (3) the imposition of a fine of $5,000 or more for a violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding.

[5] Amendment No. 1 is dated October 28, 1999, but was not received by the Commission until December 11, 2000.

[6] Securities Exchange Act Release No. 43765 (December 21, 2000), 66 FR 830.

[7] *See* Letter dated January 29, 2001, from Richard B. Levin, Assistant General Counsel and Regulatory Affairs Officer, Knight Securities, to Jonathan G. Katz, Secretary, Commission; and Letter dated January 30, 2001, from Michael T. Dorsey, Senior Vice President, General Counsel and Secretary, Knight Trading Group, to Jonathan G. Katz, Secretary, Commission. Both comment letters were from different entities within the Knight Trading Group Inc. group of companies but were substantively identical. Therefore, for purposes of this order, the Commission will refer to these letters as the ''Knight'' letters.

[8] *See* Letter dated June 14, 2001, from Patrice M. Gliniecki, Vice President and Deputy General Counsel, NASD Regulation, to Jonathan G. Katz, Secretary, Commission (''Amendment No. 3''). Amendment No. 3 completely replaced an earlier version of Amendment No. 3 that was filed with the Commission on May 10, 2001. Amendment No. 3 addresses three issued: First, NASD Regulation responds to Knight's comments (discussed *infra*.). Second, Amendment No. 3 revises the proposed rule change to clarify that a chief compliance officer for a member whose business is limited to the solicitation, purchase and/or sale of government securities may register as a government securities principal, instead of a general securities principal, and clarifies that because there is no qualifying exam for government securities principals, these individuals only must register as such. Amendment No. 3 therefore also makes corresponding changes to the rule language originally proposed to delete references to the Series 73 exam, which does not exist. Third, Amendment No. 3 clarifies that chief compliance officers for member firms limited to options activities cannot take the Series 4 exam (Registered Options Principal) in order to satisfy the registration requirement of this proposed rule change. Finally, Amendment No. 3 clarifies that chief compliance officers that have been employed by more than one firm during the grandfathering period will only be eligible for the grandfathering provision if the chief compliance officer has been working for firms conducting the same type of business. *See* discussion of the grandfathering provision, *infra*.

Form BD to be registered as a principal. NASD Regulation believes that the chief compliance officer of a member should be registered as a principal and be subject to continuing education because chief compliance officers generally advise registered representatives and other principals on compliance issues and devise compliance systems and procedures for the firm as a whole. As such, a chief compliance officer should be required to demonstrate his or her knowledge through a qualifications examination and be subject to continuing education requirements.[9]

Under the proposed rule change, the chief compliance officer must be registered as a Series 24 General Securities Principal, unless the member's activities are limited to particular areas of the investment banking or securities business. In that case, the individual may apply for a limited principal registration. Acceptable limited principal categories for a chief compliance officer are the Limited Principal Investment Company and Variable Contracts Products (Series 26), Limited Principal Direct Participation Programs (Series 39), and the Government Securities Principal, if the activities of the chief compliance officer's firm are limited to these areas.[10] To avoid imposing duplicative examination requirements on dual NASD/New York Stock Exchange (''NYSE'') members, NASD Regulation has determined that for purposes of chief compliance officer registration, it will accept the NYSE's Series 14 Compliance Official examination in lieu of any of the NASD principal examinations noted above, both for persons who have taken the NYSE Series 14 Compliance Official examination and are ''grandfathered'' as discussed below, and for persons who become chief compliance officers for dual NASD and NYSE members after the effective date of this proposed rule change.[11]

NASD Regulation proposes to make the rule change effective on January 1, 2002. A chief compliance officer who is subject to the examination requirement would be required to pass the appropriate exam within 90 calendar days of the effective date of proposed rule change. NASD Regulation also proposes to ''grandfather'' certain chief compliance officers who have been designated as a chief compliance officer on Schedule A of Form BD for two continuous years prior to the effective date of this proposed rule change, who have not been subject within the last ten years to the disciplinary procedures described in proposed Rule 1022(a), and, if applicable, have been working for firms conducting the same type of securities business (as discussed below). That is, ''grandfathered'' chief compliance officers would not have to take a qualification exam. All chief compliance officers, including those grandfathered, however, would be subject to continuing education requirements. Individuals who have served as chief compliance officers for both general securities firms and limited purpose firms during the two year grandfathering period should contact NASD Regulation's Qualifications Department to determine whether they qualify for the grandfathering provision or, whether they are eligible for a waiver of the applicable examination requirement pursuant to NASD Rule 1070(e).[12]

III. Comments

The Commission received two comments on the proposal.[13] Knight opposed the proposed rule change because it believed that it could unnecessarily and impermissibly interfere with the attorney-client relationship and the practice of law. Knight stated that the proposal could compel a lawyer to violate his duty of confidentiality and is unnecessary because the parties subject to the new rules are already subject to NASD and other regulatory oversight. Specifically, Knight stated that requiring attorneys who are chief compliance officers to register as principals would permit NASD Regulation to exert impermissible influence over member firms through the threat of enforcement and disciplinary actions against their attorneys for failing to either respond to NASD requests for information or failing to supervise associated persons.

In response, NASD Regulation stated that although NASD Regulation's Code of Procedure does not include a specific provision addressing the attorney-client privilege or the work-product doctrine, both the attorney-client privilege and the work-product doctrine would be recognized in practice, if validly asserted. NASD Regulation also noted that the NASD has an important obligation to detect and address violations of its rules and the federal securities laws, and member firms are obligated to cooperate. In addition, NASD Regulation stated that these privileges do not limit a member's obligation to comply with duties imposed by a self-regulatory organization. Finally, NASD Regulation stated that it is incumbent upon member firms that employ attorneys that serve as legal counsel and the chief compliance officer to appropriately separate these functions.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[14] In particular, the Commission finds that the proposed rule change is consistent with the requirements of section 15A(b)(6)[15] and 15A(g)(3)[16] of the Act. Section 15A(b)(6) of the Act requires the Association's rules to be designed to promote just and equitable principles of trade, and to protect investors and the public interest. Section 15A(g)(3) of the Act requires the NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

The Commission believes that the proposed rule change will promote just and equitable principles of trade and will protect investors and the public interest because the proposal institutes a formal mechanism for ensuring that chief compliance officers have attained the requisite knowledge of applicable securities laws and regulations. The Commission notes that a member's chief compliance officer plays a critical role in the operation of NASD member firms in that chief compliance officers typically advise registered representatives and other principles on compliance issues and devise compliance systems and procedures for the firm as a whole. Thus, the chief compliance officer can provide the foundation that ensures a member firm's compliance with federal and state securities laws and regulations.

[9] By requiring chief compliance officers to be registered, NASD Regulation noted that it is not creating a presumption that chief compliance officers are supervising the member's securities or investment banking business or otherwise are control persons. NASD Regulation stated that some chief compliance officers are completely segregated from a member's supervisory structure. As in the past, NASD Regulation will determine whether a person is acting as a supervisor or control person by looking at the responsibilities and functions he performs for the member, not simply his title.

[10] Chief compliance officers for firms engaged in a government securities business need not take a qualifying exam, as one does not exist; such chief compliance officers need only register with NASD Regulation. *See* Amendment No. 3, *supra* note 5.

[11] *See* Amendment No. 1, *supra* note 3.

[12] *See* Amendment No. 3, *supra* note 8.

[13] *See supra* note 7.

[14] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78o–3(b)(6).

[16] 15 U.S.C. 78o–3(g)(3).

The Commission also finds that requiring the registration, examination and continuing education of chief compliance officers is within NASD Regulation's authority to prescribe standards of training, experience, and competence for persons associated with NASD members. Thus, the Commission finds that it is consistent with the Act to require that the chief compliance officer register as a Series 24 General Securities Principle.[17] The Commission also finds that it is appropriate to permit chief compliance officers whose activities are limited to particular areas of the investment banking or securities business to register as limited principals and take the appropriate exam corresponding to their subject area, if a corresponding exam exists and NASD Regulation finds that the exam adequately demonstrates a chief compliance officer's knowledge of the subject area.[18] Therefore, the Commission finds that it is appropriate to permit limited principal registration for chief compliance officers for members whose business is limited to Investment Company and Variable Contracts and Direct Participation Programs; to delete references to the Series 73, Government Securities Principal exam, in the test of the original proposed rule language, as it does not exist; and to require that chief compliance officers for member firms engaged in options-related business take the Series 24 exam, rather than the Series 4, Registered Options Principal exam. The Commission also finds that requiring chief compliance officers to participate in continuing education helps to ensure that chief compliance officers remain sufficiently knowledgeable to advise registered representatives and other principals on compliance issues, consistent with the requirements of the Act.

The Commission finds that the proposed grandfathering provision is a reasonable approach to implementing the new registration requirements, and notes that all grandfathered chief compliance officers will be subject to continuing education requirements. In addition, by requiring the firms with whom a grandfathered chief compliance officer has worked during the grandfathering period to conduct the same type of securities business, NASD Regulation ensures that those chief compliance officers have had consistent substantive experience during the grandfathering period.

The Commission further notes that the grandfathering provision is effective on January 1, 2002, the proposed effective date of the rule change. Whether NASD Regulation actually implements the registration requirements for chief compliance officers on January 1, 2002 or delays the implementation for other reasons, the Commission has determined that the grandfathering provision for chief compliance officers for purposes of this rule will continue to be January 1, 2002. Thus, only those individuals who have been a chief compliance officer continuously from January 1, 2000–January 1, 2002 and who otherwise meet the other criteria set forth in this proposed rule change will be eligible for the grandfathering provision—regardless of when NASD Regulation actually implements the proposed rule change.

The Commission also finds that NASD Regulation's response to the commenter sufficiently address concerns relating to the attorney client privilege. The NASD's statutory obligation to ensure compliance with its rules and the federal securities laws is mandatory, and the Commission agrees that member firms are obligated to cooperate with the NASD in its investigations and actions to ensure compliance with the Act and the rules and regulations thereunder. The Commission also notes that the NASD has stated that it will recognize a validly asserted privilege. Finally, the Commission believes that member firms that employ attorneys to serve as both the chief compliance officers and legal counsel should be able to provide for the appropriate separation of these functions.

V. Accelerated Approval for Amendment No. 3

The Commission finds good cause for accelerating approval of Amendment No. 3 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that the Amendment provides useful clarifications to the proposed rule change. Accordingly, the Commission finds that good cause exists to accelerate approval of Amendment No. 3 to the proposed rule change.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether the amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. 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 Regulation. All submissions should refer to the File No. SR–NASD–99–46, Amendment No. 3, and should be submitted by July 17, 2001.

VII. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[19] that the proposed rule change (SR–NASD–99–46), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

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[17] The Commission notes that permitting chief compliance officers to choose between the NYSE's Series 14 examination and the NASD's Series 24 examination also should avoid imposing duplicative examination requirements on dual NASD/NYSE members. *See* Amendment No. 1, *supra* note 3.

[18] *See* Amendment No. 3, *supra* note 7.

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3347; Amendment #1]

State of Texas

In accordance with a notice received from the Federal Emergency Management Agency, dated June 18, 2001, the above-numbered Declaration is hereby amended to include Grimes and Harrison Counties in the State of Texas as disaster areas caused by Tropical Storm Allison occurring on June 5, 2001 and continuing.

In addition, applications for economic injury loans from small businesses located in Marion and Washington Counties in the State of Texas; and Caddo Parish in the State of Louisiana may be filed until the specified date at the previously designated location. Any counties contiguous to the above named primary counties and not listed here have been previously declared.

All other information remains the same, i.e., the deadline for filing