

change eliminates the current two-million-share average daily cap on preferencing charges.

The application of the proposed revenue sharing program can be demonstrated by the following example. Assume that the Exchange has SOR in a given quarter of \$2 million, that all other operating revenue equals \$250,000 during that quarter, that actual quarterly expenses equal \$1.5 million, and that the working capital target for the quarter is \$250,000. In addition, assume that Specialist Firm #1 contributes \$500,000 in quarterly SOR (or 25% of total SOR), Specialist Firm #2 contributes \$300,000 (15%), and Specialist Firms #3, #4, and #5 each contribute \$200,000 (10%). In this event, \$500,000 (*i.e.* \$2.25 million minus \$1.75 million) would be available for sharing with specialist firms. Specialist Firm #1 would receive \$125,000, or 25% of \$500,000; Specialist Firm #2 would receive \$75,000; and Specialist Firms #3, #4, and #5 would each receive \$50,000. In this example, the Exchange would never share more than \$2 million with its specialist firms even if actual expenses and working capital needs were less than \$250,000.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of section 6(B)(5)⁵ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will create an incentive for members to bring order flow to the Exchange, thereby increasing competition which, in turn, will enhance the National Market System.

In addition, the Exchange believes the proposed rule change furthers the objectives of section 6(b)(4)⁶ in that it is designed to provide for the equitable allocation of reasonable fees among its members. Specifically, the proposal provides for revenue sharing with CSE's specialist firms, who are primarily responsible for the Exchange's financial viability and growth.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change would impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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. 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 CSE. All submissions should refer to File No. SR-CSE-99-02 and should be submitted by March 22, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-4959 Filed 2-26-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41075; File No. SR-NASD-99-4]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Microcap Initiative—Recommendation Rule

February 19, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 13, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Association is proposing new NASD Rule 2315, which requires members to review current financial statements of, and current business information about, an issuer prior to recommending a transaction to a customer in an over-the-counter ("OTC") equity security. Additionally, the proposed rule change would amend NASD Rule 6740 to permit members to submit a certification to the Association that states that the member has conducted a review of specified information and has fulfilled its obligations under Rule 15c2-11 under the Act³ for documents that currently reside on the SEC's Electronic Data Gathering and Retrieval System ("EDGAR") database. Below is the text

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78f(b)(4).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.15c2-11.

of the proposed rule change. Proposed new language is in *italics*.

* * * * *

2315. Recommendations to Customers in OTC Equity Securities

The requirements of this Rule are in addition to other existing member obligations under NASD rules and the federal securities laws, including obligations to determine suitability of particular securities transactions with customers and to have a reasonable basis for any recommendation made to a customer. This Rule is not intended to act or operate as a presumption or as a safe harbor for purposes of determining suitability or for any other legal obligation or requirement imposed under NASD rules or the federal securities laws.

(a) (1) No member or person associated with a member shall recommend to a customer the purchase, sale, or exchange of any equity security that is not listed on Nasdaq or on a national securities exchange and is published or quoted in a quotation medium unless the member has reviewed current financial statements of, and current business information about, the issuer, and makes a determination that such information, and any other information available, provides a reasonable basis under the circumstances for making the recommendation.

(2) For purposes of this Rule, "current financial statements" shall include:

(A) A balance sheet as of a date less than 16 months before the date of the recommendation;

(B) A statement of profit and loss for the 12 months preceding the date of the balance sheet;

(C) If the balance sheet is not as of a date less than 6 months before the date of the recommendation, additional statements of profit and loss for the period from the date of the balance sheet to a date less than 6 months before the date of the recommendation;

Financial statements and other financial reports filed during the 12 months preceding the date of the recommendation and up to the date of the recommendation with any regulatory authority, including the Commission, foreign regulatory authorities, bank and insurance regulators; and

(E) All financial information contained in registration statements, including any amendments, with respect to securities transactions registered under the Securities Act of 1933 (Securities Act), or in the case of securities offered pursuant to the exemptions from registrations provided

by Regulation A, Rule 505, or Rule 506 under the Securities Act, all financial information provided in connection with offerings conducted pursuant to those rules.

(b) If an issuer has not made current filings required by any regulatory authority, including the Commission, a foreign regulatory authority, or bank and insurance regulators, such review must include inquiry into the circumstances concerning the failure to make current filings, and a determination, based on all the facts and circumstances, that the recommendation is appropriate under the circumstances. Such a determination must be made in writing and maintained by the member.

(c) For purposes of this Rule, "quotation medium" shall mean any quotation system, publication, electronic communication network, or any other device, including any issuer or inter-dealer quotation system, that is used to regularly disseminate quotations or indications of interest in transactions equity securities that are not listed on Nasdaq or on a national securities exchange, including offers to buy or sell at a stated price or otherwise or invitations of offers to buy or sell.

(d) A member firm shall designate a registered individual to conduct the review required by this rule. In making such designation, the member firm must ensure that

(1) Either the individual is registered as a Series 24 principal, or his conduct in complying with the provisions of this Rule is appropriately supervised by a Series 24 individual; and

(2) Such designated individual has the requisite skills, background and knowledge to conduct the review required under this rule.

(e) The requirements of this Rule shall not apply to:

(1) Transactions that meet the requirements of Rule 504 of Regulation D under the Securities Act and transactions with an issuer not involving and public offering pursuant to Section 4(2) of the Securities Act;

(2) Transactions with or for an account that qualifies as an "institutional account" under Rule 3110(c)(4) or with a customer that a "qualified purchaser" under Section 3(c)(7) of the Investment Company Act;

(3) Transactions in an issuer's securities if the issuer has \$100 million in assets and \$10 million in shareholder's equity as of date of the issuer's most recent audited balance sheet, which balance sheet should be of a date within 6 months prior to the recommendation; or

(4) Transactions in securities of a bank under Section 3(a)(4) of the Securities Exchange Act of 1934 and or insurance company subject to regulation by a state or federal bank or insurance regulatory authority.

* * * * *

6740. Submission of Rule 15c2-11 Information on Non-Nasdaq Securities

(a)-(d) No change.

(e) As an alternative to submitting to the Association a copy of the documents required by paragraph (b) of the Rule, a member may submit to the Association a certification signed by a principal of the member firm stating that the firm has complied with the requirements of SEC Rule 15c2-11, including the member's affirmative review obligation, as to any submission with respect to which the required documents currently reside in the SEC's EDGAR database.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASD has actively studied the OTC market in an effort to address abuses in the trading and sales of thinly-traded, thinly-capitalized ("microcap") securities quoted on the OTC market. The securities that are the subject of the proposed rule change are not listed on Nasdaq or any exchange and are quoted on the OTC Bulletin Board ("OTCBB"),⁴ in the "pink sheets" published by the

⁴ 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, warrants, units, and American Depositary Receipts not listed on any other U.S. national securities market or exchange. Unlike Nasdaq or registered national securities exchanges where individual companies apply for listing on the market—and must meet and maintain strict listing and maintenance standards—individual brokerage firms, or market makers, enter quotations for specific securities on their own behalf through the OTCBB.

National Quotation Bureau, Inc. ("Pink Sheets"), and in other quotation media where there are no listing requirements. The NASD is concerned with actual and potential fraud or manipulation in the markets for these securities, and the connection between potential fraud and manipulation and the lack of reliable and current financial information about issuers of microcap securities.

In the listed securities markets, the quoted price of a security helps to reflect the information available about the listed security and its issuer. In the OTC market, there are no listing standards and, therefore, there is a greater need for firms to independently review financial statements to verify that a recommended transaction in a microcap security is suitable.⁵ This proposal is meant to address this issue.

Proposed Rule 2315—

Recommendation Rule. Proposed Rule 2315 ("Recommendation Rule") would prohibit a member or associated person from recommending a transaction to a customer in an OTC equity security that is published or quoted regularly in a quotation medium unless the member has first reviewed current financial statements and other business information about an issuer and determined that this information, along with other information available, provides a reasonable basis for making the recommendation. Application of the rule would be limited to equity securities that are not listed on Nasdaq or any national securities exchange, and that are quoted on the OTCBB, in the Pink Sheets, or in any other system that regularly disseminates indications of interest and quotation information. Such systems would include Web sites, issuer trading services, and other member or non-member systems that provide this data to the public.

The requirements in the proposed rule would not affect requirements under the federal securities laws and under NASD rules requiring a broker-dealer that recommends securities to its customers to have a reasonable basis for those recommendations.⁶ In addition,

the proposed rule expressly is not intended to act or operate as a presumption or as a safe harbor for purposes of determining suitability or for any other legal obligation or requirement imposed under NASD rules or the federal securities laws.

The proposed rule requires members to obtain and review the issuer's "current financial statements" as defined in paragraph (a)(2) of the proposed rule. Specifically, members would be required to obtain and review an issuer's balance sheet that is dated within 16 months of the date of the recommendation, as well as a profit and loss statement for the period of 12 months preceding the date of the balance sheet. Also, members would have to obtain and review any financial statements filed during the 12 months preceding the date of the recommendation.

Under circumstances in which a proposed recommendation to the customer is not made within 6 months of the date of the issuer's balance sheet, the member would be required to obtain and review an additional profit and loss statement of the issuer from the date of the balance sheet to a date within 6 months of the proposed recommendation to the customer.⁷ For example, if a member proposes to make a recommendation to a customer on March 15, 1999, the member would be required to obtain and review the following information to satisfy the proposed rule: A balance sheet of the issuer with a calendar year-end of December 31, 1997; a profit and loss statement for the 12-month period ended December 31, 1997; and a 9-month interim profit and loss statement for the period of January 1, 1998, through at least September 30, 1998.

When issuers file reports with the SEC or with other foreign or domestic regulatory authorities, the proposed rule would require members to collect and review all financial statements and other financial reports filed by the issuer within the 12 months preceding the recommendation. Members also must obtain and review financial

information contained in registration statements of registered securities and all financial information provided in connection with securities offered pursuant to an exemption from registration.

If an issuer has not made current filings as required by a regulatory authority, a member must inquire into the circumstances concerning the issuer's failure to file current reports, and determine based on all the facts and circumstances whether a recommendation is appropriate under the circumstances. The evidence of the determination to make a recommendation in this situation should be in writing and maintained by the member.

The proposed rule requires a member to designate registered individual to conduct a review of the information specified in paragraph (a)(2) of the proposed rule. In making this determination, a member firm must ensure that either the individual is registered as a Series 24 principal, or his conduct in complying with the provisions of this proposed rule is appropriately supervised by a Series 24 individual. The designated individual should possess the requisite skills, background, and knowledge to conduct the review required by the proposed rule. The associated person making the recommendation to the customer is obligated, prior to the recommendation, to assure that the member has conducted such a review of the specified information in accord with the proposed rule. The member should document the list of information reviewed, the date of the review, and the name of the person performing the review of the required information under the proposed rule.

Exemptions. The proposed rule exempts from its coverage transactions that are exempt from registration under Section 4(2) of the Securities Act of 1933 ("Securities Act")⁸ and transactions that meet the requirements of Rule 504 of Securities Act Regulation D.⁹ This exemption is based on the fact that, unlike the specific disclosure requirements that apply to registered and other offerings, the Securities Act does not mandate that Section 4(2) and Rule 504 issuers furnish specified information to purchasers.

Because of this exemption, there are no specific review requirements under the proposed Recommendation Rule for broker-dealers that recommend transactions in securities exempt from registration under Rule 504 or Section

⁵ The Commission notes that the NASD has recently adopted amendments to NASD Rule 6530, *OTCBB Eligible Securities*, to prohibit members from quoting certain securities through the OTCBB. See Securities Exchange Act Release No. 40878 (January 4, 1999), 63 FR 1255 (January 8, 1999) (order approving SR-NASD-98-51).

⁶ See, e.g., *SEC v. Hasho*, 784 F. Supp. 1059 (S.D.N.Y. 1992), citing *SEC v. Hanley*, 415 F.2d 589 (2nd Cir. 1969); Securities Exchange Act Release No. 29094 (April 17, 1991), 56 FR 19148 (April 25, 1991) (adopting amendments to Rule 15c2-11), n.22; and NASD Rule 2310, *Recommendations to Customers (Suitability)*, which requires a member to have reasonable grounds for believing that a recommendation to a customer is suitable based on the facts disclosed, the customer's other security

holdings, and his or her financial situation and needs.

⁷ This requirement is similar to language in paragraph (a)(5) of Rule 15c2-11 under the Act, which specifies the information a broker-dealer must review before initiating or resuming quotations for non-reporting issuers' securities. Rule 15c2-11 requires a broker-dealer to obtain and review certain information before initiating or resuming quotations in a quotation medium. 17 CFR 240.15c2-11; see also Securities Exchange Act Release No. 29094 (April 17, 1991), 56 FR 19148 (April 25, 1991). On February 19, 1999, the Commission approved the publication of a release repropounding amendments to Rule 15c2-11.

⁸ 15 U.S.C. 77d(2).

⁹ 17 CFR 230.504.

4(2) of the Securities Act. However, under prevailing law, including Rule 10b-5 under the Act¹⁰ and NASD Rule 2310, a broker-dealer must have a reasonable basis for recommending a securities transaction to a customer and must make an appropriate suitability determination. In order to satisfy these requirements with respect to Rule 504 or Section 4(2) exempt offerings, the broker-dealer must review any information provided by the issuer as well as other relevant information, including information obtained in response to "red flags" and otherwise. Broker-dealers that recommend transactions covered by the Recommendation Rule also must comply with these requirements, as well as with the Rule's requirement to review specific identified information.

The rule also exempts transactions with or for institutional investors. For purposes of this exemption, an account or customer must qualify either as an "institutional account" under NASD Rule 3110(c)(4) or as a "qualified purchaser" under section 3(c)(7)¹¹ of the Investment Company Act of 1940 ("ICA").¹² Transactions with or for institutional investors are exempt from the proposed rule because institutional customers are generally knowledgeable and sophisticated regarding investments in this marketplace.

In addition, the exemption would exclude from the scope of the proposed rule securities of certain issuers, including foreign issuers, with at least \$100 million in assets and \$10 million in shareholders' equity, that are not listed on a national securities exchange or Nasdaq. The exemption is based on the premise that securities of these issuers are more likely to be followed by market analysts, are less likely to be the subject of fraudulent sales practices, and are generally more liquid. This

exemption also minimizes the potential that the proposed rule may competitively disadvantage well-capitalized, internationally-traded issuers that have chosen not to list on a national securities exchange or Nasdaq.

In setting the financial criteria for an exemption, the NASD selected financial criteria of at least \$100 million of total assets and stockholders' equity of at least \$10 million. These criteria comport with NASD Rule 4420(f) and Section 107(A) of the American Stock Exchange Guide, which set forth the financial standards to qualify to quote on the Nasdaq and the Amex, respectively, for "other securities" that are not otherwise covered by conventional listing criteria for domestic and foreign issuers. In order to rely on the size exemption, a member must obtain the issuer's audited financial statements prepared in accordance with either U.S. or foreign Generally Accepted Accounting Principles and dated within 6 months of the date of the recommendation or trade to determine whether the issuer's securities quality for the exemption.

Under the proposed rule, securities of banks, as defined under section 3(a)(6) of the Exchange Act,¹³ and insurance companies are exempt from the proposed rule on the ground that banks and insurance companies are subject to independent oversight by federal and state regulatory authorities, and are less likely to be the subject of market manipulation or issuer fraud.

Amendments to NASD Rule 6740. Currently, NASD Rule 6740 requires members to submit the Association certain specified information as required by Rule 15c2-11 under the Act before the member can initiate or resume quotations in a non-Nasdaq security in any quotation medium. The proposed amendment to NASD Rule 6740 will permit members to elect not to submit to the Association hard copies of issuer reports that are filed by the issuer through the SEC's EDGAR database and that currently reside on such system. Under this alternative, members may submit to the NASD a certification that states that the member has conducted a review of the relevant documents and has fulfilled its Rule 15c2-11 obligations, including the affirmative review obligation. This certification must be reviewed and signed by a principal of the member firm.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the

provisions of section 15A(b)(6)¹⁴ of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in general, to protect investors and the public interest. The NASD believes that the proposed rule change will address actual and potential fraud in the quotation and trading of unlisted securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in NASD Notice to Members 98-15 ("Notice" or "NTM") in January 1998. A total of 43 comments were received in response to the Notice. As published in the Notice, proposed Rule 2315 would have required members to review certain financial statements of an issuer prior to making a recommendation in an OTC equity security to a customer and deliver to customers a disclosure statement regarding the differences between listed and OTC markets prior to the first purchase and annually thereafter (Rule 2360, which was proposed to be numbered Rule 2350 at the time the NTM was published).

Of the 43 responses received, most (25 responses, or approximately 60%) were from broker-dealer firms or registered persons and the balance (18 comments, or approximately 40%) were from individual investors, issuers, various state agencies, trade associations, and other interested parties. In providing comments, a majority of commenters expressed a position (i.e., approval or disapproval) regarding each specific proposal. Other commenters did not provide a stated position on each proposal, but identified particular issues with certain proposals and provided written comments.

As to proposed Rule 2315, 11 commenters approved or approved with qualification, and 18 commenters disapproved of, the rule proposal. The comments generally in favor of the proposal approved of the rule placing responsibility on the firm that is soliciting an order and indicated that, unless a broker-dealer is compelled to maintain information and review this

¹⁰ 17 CFR 240.10b-5.

¹¹ 15 U.S.C. 80a-3(c)(7).

¹² NASD Rule 3110(c)(4) defines an "institutional account" as the account of a bank, savings and loan association, insurance company, or registered investment company; an investment adviser registered under Section 203 of the Investment Advisers Act of 1940; or any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least \$50 million. The term "qualified purchaser" as used in Section 3(c)(7) of the ICA is described in Section 2(a)(51) of the ICA as: (1) individuals (including any shared ownership interest in an issuer with the person's qualified purchaser spouse) who own not less than \$5 million in investments; (2) specified family-owned companies with not less than \$5 million in investments; (3) trusts established and funded by qualified purchasers for which investment decisions are made by a qualified purchaser; and (4) entities that in the aggregate own and invest on a discretionary basis for their own account, or for the accounts of other qualified purchasers, not less than \$25 million in investments. 15 U.S.C. 80a-2(a)(51).

¹³ 15 U.S.C. 78c(a)(6).

¹⁴ 15 U.S.C. 78o-3(b)(6).

information, fraudulent omission of material fact will occur. The comments opposing the proposal generally maintained that the current rules are sufficient and the proposed rules are extremely burdensome. In particular, the opponents state that the record-keeping and compliance burden is particularly chilling to these stocks and the time it takes to locate and review financial statements on a company will limit a firm's choice of stocks to recommend.

The Association is not proposing to adopt Rule 2360 at this time. Therefore, this proposed rule change does not discuss the comments on that proposed rule.

After the public comment process, the staff recommended and the NASD and NASD Regulation Boards approved the following modifications to the proposed rule at their meetings in May 1998. Proposed Rule 2315 was amended to add exemptions for securities of certain financially sizable issuers, securities of banks and insurance companies, and transactions with institutional investors. In addition, the Rule was amended to require a member to review certain current financial information and other business information about the issuer, in addition to the requirements set out in the original rule proposal, before making a recommendation to a customer, and to require members to designate a qualified registered individual to review the information required by the rule.

After NASD Board approval of the modifications to the proposed rules in May, the staff received an additional comment that requested the staff to consider an additional exemption from the scope of proposed Rule 2315. The commenter suggested that recommended sales transactions in OTC equity securities with customers should be exempt from proposed Rule 2315. The premise for the exemption is based on the need to expedite liquidation of customer positions in OTC equity securities without the need for a member to review specified information regarding the issuer as required by the proposed rule. The commenter suggested that a delay in processing the sale may preclude a customer from capturing a particular market opportunity which may result in the customer reducing his return or increasing his loss in a particular investment. The suggested exemption would not apply to short sales by investors in these securities. Due to the nature and the timing of the comment, NASD staff requested that the Commission specifically seek comment in its notice to the public on the

potential need for such an exemption from proposed Rule 2315.

At a subsequent Board meeting in December 1998, the staff recommended and the Board approved further modifications to Rule 2315. In particular, the Board approved an expansion of the definition of "current financial statements" in NTM 98-15 to include financial information contained in the registration statements of Securities Act registered securities and all financial information provided in connection with securities offered in connection with exemptions from registration provided by Regulation A,¹⁵ Rule 505,¹⁶ or Rule 506.¹⁷ The Board also approved a revision to the exclusions from the Rule for initial public offerings and offerings conducted in compliance with Regulation A and Rules 504-506 under the Securities Act. That exemption is now limited to transactions that meet the requirements of Rule 504 and Section 4(2) transactions.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Specifically, the Commission seeks comment on the potential need for an exemption from proposed NASD Rule 2315 for recommended sales transactions in OTC equity securities. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. 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 at 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.

All submissions should refer to File No. SR-NASD-99-4 and should be submitted by March 22, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 99-4954 Filed 2-26-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41056; File No. SR-NASD-97-79]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change Relating to Fees and Hearing Session Deposits for the Arbitration of Claims by Public Investors, Members and Associated Persons

February 16, 1999.

I. Introduction

On October 29, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary NASD Regulation, Inc. ("NASD Regulation") filed with 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 to amend Rules IM-10104, 10205 and 10332 of the NASD's Code of Arbitration Procedure ("Code") to increase the arbitration filing fees, hearing session deposits, and arbitrator honoraria for intra-industry and public investor arbitrations administered by NASD Regulation.³

Notice of the proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No.

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ This rule filing replaced SR-NASD-97-39, in which NASD Regulation originally proposed amendments to the filing fees and hearing session deposits.

¹⁵ 17 CFR 230.251.

¹⁶ 17 CFR 230.505.

¹⁷ 17 CFR 230.506.