

OMB APPROVAL

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2005 - 067
Amendment No. 1

Proposed Rule Change by National Association of Securities Dealers
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial ☐	Amendment ☒	Withdrawal ☐	Section 19(b)(2) ☒	Section 19(b)(3)(A) ☐	Section 19(b)(3)(B) ☐
			Rule		
Pilot ☐	Extension of Time Period for Commission Action ☐	Date Expires 	☐ 19b-4(f)(1) ☐ 19b-4(f)(2) ☐ 19b-4(f)(3)	☐ 19b-4(f)(4) ☐ 19b-4(f)(5) ☐ 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document
☐

Exhibit 3 Sent As Paper Document
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Description

Provide a brief description of the proposed rule change (limit 250 characters).

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Last Name
Title
E-mail
Telephone Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date

By
(Name)

(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Edward S. Knight,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² the National Association of Securities Dealers, Inc. (“NASD”), through its subsidiary, The Nasdaq Stock Market, Inc. (“Nasdaq”), is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to Rule 6530 to clarify the availability of a process to review eligibility determinations on the OTC Bulletin Board (“OTCBB”) and to adopt fees for such review.³

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.⁴

6530. OTCBB-Eligible Securities

A Member shall be permitted to quote the following categories of securities in the Service:

(a) – (e) No change.

(f)(1) Upon determining that a security would be ineligible for quotation under paragraph (a)(2) or (3) or (4) above upon expiration of the applicable grace period, Nasdaq will send a notification to the address on the cover of the issuer’s last periodic report. This notification will state the last day of the applicable grace period, and will indicate that unless the condition causing the ineligibility has been cured by that date, the security will be removed immediately thereafter; provided, however, in all cases Nasdaq will provide at least seven calendar days from the date of the notification for

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Nasdaq originally filed the proposal on May 24, 2005. This Amendment 1 addresses comments received from the Commission Staff concerning the review process and removes a fee proposed in the original filing.

⁴ Changes are marked to the rule text that appears in the electronic NASD Manual found at www.nasd.com. No pending rule filings would affect the text of the rules amended herein.

the issuer to request review pursuant to paragraph (f)(2), below, before removal of the security.

(2) The issuer may request a review of Nasdaq's determination by a hearing panel under the Rule 9700 Series, as modified herein. Nasdaq must receive the issuer's request for review at least two days prior to the scheduled removal of the securities, together with a \$4,000 hearing fee payable to The Nasdaq Stock Market, Inc. to cover the cost of review. A request for review will stay the removal of the issuer's securities from the Service until the hearing panel issues a decision under Rule 9750. The hearing panel will consider only the issue of whether the security is then eligible for quotation in the Service and shall not have discretion to grant any extensions of time for ineligible securities to become eligible. Notwithstanding any contrary provision in the Rule 9700 Series, hearings will be conducted via telephone and the issuer will be provided at least five business days notice of the hearing unless the issuer waives such notice.

(3) An issuer may request a review of a hearing panel's decision by the Nasdaq Listing and Hearing Review Council under Rule 9760. Such a request for review must be accompanied by a \$4,000 fee payable to The Nasdaq Stock Market, Inc. to cover the cost of review. The Nasdaq Listing and Hearing Review Council will only consider whether the security is then eligible for quotation in the Service and shall not have discretion to grant extensions of time for ineligible securities to become eligible.

* * * * *

(b) Not applicable

(c) Not applicable

2. Procedures of the Self-Regulatory Organization

The Board of Directors of Nasdaq approved the proposed rule change at its meetings on October 29, 2003 and April 20, 2005, and the Board of Governors of the NASD had an opportunity to review the proposed rule change at its meetings on March 4 and April 21, 2005, which authorized the filing of the rule change with the Commission. The staff of Nasdaq has provided an opportunity for the staff of NASD Regulation, Inc. to consult with respect to the proposed rule change, pursuant to the Plan of Allocation

and Delegation of Functions by NASD to Subsidiaries. No other action by the NASD is necessary for the filing of the rule change.

Nasdaq will implement the proposed rule change immediately upon approval.

Questions regarding this rule filing may be directed to Arnold Golub, Associate General Counsel, The Nasdaq Stock Market, Inc. at (301) 978-8075 (telephone) or (301) 978-8472 (fax).

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

a. Purpose

In January 1999, Nasdaq and the NASD adopted amendments to Rules 6530 and 6540 that require all issuers of securities quoted on the OTCBB to be current in their filings with the Commission or other appropriate regulator (the "Eligibility Rule").⁵ When an issuer does not comply with the Eligibility Rule, either because a filing is not made or because a filing is incomplete,⁶ Nasdaq appends a fifth character "E" to the trading symbol of that issuer's securities. This identifier notifies investors and other market participants that Nasdaq does not have information that the issuer is current in its reporting obligations. If the issuer does not comply within the applicable grace period

⁵ See Securities Exchange Act Release No. 40878 (January 4, 1999), 64 FR 1255 (January 8, 1999) (SR-NASD-98-51). These amendments were fully implemented for all securities quoted on the OTCBB as of June 2000.

⁶ In order for a filing to be complete, it must, for example, contain all required certifications, attestations, and financial statements, including an auditor's review pursuant to SAS-100 (for quarterly reports) or an unqualified auditor's opinion (for annual reports). See, e.g., Rule 13a-14 under the Act, 17 CFR 240.13a-14, and Rules 10-01(d) and 2-02(c) of Regulation S-X, 17 CFR 210.10-01(d) and 2-02(c). In addition, the auditor must be registered with the Public Company Accounting Oversight Board. See Section 102(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7212(a).

provided by the Eligibility Rule (typically 30 days), Nasdaq removes the issuer's securities from the OTCBB.⁷

Since late 2000, Nasdaq has permitted OTCBB companies to request review of Nasdaq's determination under the Eligibility Rule before a Listing Qualifications Hearing Panel pursuant to the NASD Rule 9700 Series.⁸ The proposed rule change would provide transparency to the availability of such review and to the scope of such review.

Specifically, the proposed rule would specify that while hearing panels can determine whether the securities of an issuer are eligible for continued quotation because the issuer has, in fact, filed a complete periodic report, they do not have the discretion to allow the securities of delinquent companies to continue to trade on the OTCBB.⁹ Nasdaq believes that this lack of discretion is appropriate given the 30 or 60-day grace period that is already built into the rule. Moreover, there is no significant barrier to re-entry on the OTCBB once a delinquent issuer becomes current in its filings.¹⁰ The proposed rule

⁷ The Eligibility Rule provides a 60-day grace period to banks, savings association and insurance companies that do not file with the Commission, but are required to file with other regulators.

⁸ See High Speed Net Solutions, Inc., Securities Exchange Act Release No. 43434 (Oct. 12, 2000); Palmworks, Inc., Securities Exchange Act Release No. 43423 (Oct. 6, 2000); JD American Workwear, Inc., Securities Exchange Act Release No. 43295 (Sept. 15, 2000).

⁹ If a valid filing is made before the hearing panel's decision is issued, the company would not be rendered ineligible for further quotation on the OTCBB.

¹⁰ In order for an eligible issuer to be re-included on the OTCBB, a market maker must file a Form 211 with the NASD to initiate quotations. Note that pursuant to proposed Rule 6530(e), the securities of a company that is repeatedly late in filing its periodic reports over a two-year period may be ineligible for quotation for one year, even once that issuer becomes current in its filings. See SR-NASD-2005-11, Securities Exchange Act Release No. 52291 (Aug. 18, 2005), 70 FR 49701 (Aug. 24, 2005).

change notes that the request for review will stay the security's removal until the Panel makes its determination.

Unlike the Rule 4800 Series that governs Nasdaq hearings, the Rule 9700 Series does not provide for a fee to offset Nasdaq's costs to conduct these hearings.¹¹ Given the increasing number of these hearings,¹² Nasdaq believes it appropriate to adopt a fee to offset the associated costs. Specifically, Nasdaq proposes to adopt a \$4,000 fee for companies requesting review by a Listing Qualifications Hearing Panel. Companies that seek review of the panel's decision by the Nasdaq Listing and Hearing Review Council would also be subject to a \$4,000 fee.

Finally, Nasdaq wishes to clarify, following discussions with staff of the Commission's Office of Compliance, Inspections, and Examinations and Division of Market Regulation, that it is implementing changes that will result in the removal of an ineligible security either 30 or 60 days, as applicable, after the filing due date. Currently, such removals are effected either 30 or 60 days, as applicable, after notice of the security's ineligibility is published on the OTCBB Daily List, available at www.otcbb.com.¹³ Further, under the proposed rule change, Nasdaq will send a notice to

¹¹ See NASD Rule 4820(c), which requires Nasdaq-listed issuers to submit a \$4,000 fee for a written hearing and a \$5,000 fee for an oral hearing, to cover the cost of holding the hearing, and NASD Rule 4840(b), which requires Nasdaq-listed issuers to submit a fee of \$4,000 to cover the cost of review by the Nasdaq Listing and Hearing Review Council. See also Sections 1203 and 1205 of the Amex Listed Company Guide, which impose similar fees, and Section 804.00 of the NYSE Listed Company Manual, which requires an issuer to submit a \$20,000 fee to request review of a delisting decision by the NYSE staff.

¹² In 2003, Nasdaq received 14 hearing requests for OTCBB issuers. By contrast, in 2004, Nasdaq received 53 hearing requests for OTCBB issuers and from January 1 until July 31, 2005, Nasdaq had already received 110 such requests.

¹³ Nasdaq expects to implement this change on approximately November 15, 2005.

the address appearing on the issuer's most recent periodic report at least seven calendar days prior to the security's removal, even if the grace period has already expired. At the same time, Nasdaq will publish notice of the expected removal on www.otcbb.com.

Nasdaq believes that this minimum period will provide investors, and market participants adequate notice of Nasdaq's determination and allow issuers the opportunity to request review, if so desired.

b. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,¹⁴ in general and with Sections 15A(b)(5) and 15A(b)(6) of the Act,¹⁵ in particular. Section 15A(b)(5) of the Act requires the equitable allocation of reasonable dues, fees, and other charges "among members *and issuers* and other persons using any facility or system." (emphasis added). Currently, Nasdaq is providing certain OTCBB-related services and incurring the associated costs, yet there is no mechanism to properly allocate such costs to the OTCBB issuers that are the most direct beneficiaries of these additional services. The proposed service fees would facilitate proper allocation of costs, as envisioned in the Act, and would compensate Nasdaq for the additional services it is asked to provide. Section 15A(b)(6) requires that Nasdaq's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The proposed clarifications regarding the hearings process will protect investors and the public interest by providing additional transparency to Nasdaq's procedures, while

¹⁴ 15 U.S.C. 78o-3.

¹⁵ 15 U.S.C. 78o-3(b)(5) and (6).

limiting the ability of a company to continue to have its securities quoted on the OTCBB when that company is ineligible due to its failure to file its periodic regulatory reports and provide complete disclosure to investors.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

Nasdaq does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on rules of Another Self-Regulatory Organization of the Commission

Not applicable.

9. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 4. Proposed rule text marked to show changes from original filing.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASD-2005-067)

October __, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change to Clarify the Availability of a Review Process for Eligibility Determinations under Rule 6530 and to Adopt Fees for Such Review.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 24, 2005, the National Association of Securities Dealers, Inc. (“NASD”), through its subsidiary, The Nasdaq Stock Market, Inc. (“Nasdaq”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq submitted an amendment to this filing on September 27, 2005³. 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 the Substance of the Proposed Rule Change

Nasdaq proposes to clarify the availability of a process to review eligibility determinations under Rule 6530 and to adopt fees for such review. Nasdaq will implement the proposed rule change immediately upon approval.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment 1 modified the proposed rule language in response to comments received from the Commission Staff concerning the review process and removed a fee proposed in the original filing.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.⁴

6530. OTCBB-Eligible Securities

A Member shall be permitted to quote the following categories of securities in the Service:

(a) – (e) No change.

(f)(1) Upon determining that a security would be ineligible for quotation under paragraph (a)(2) or (3) or (4) above upon expiration of the applicable grace period, Nasdaq will send a notification to the address on the cover of the issuer's last periodic report. This notification will state the last day of the applicable grace period, and will indicate that unless the condition causing the ineligibility has been cured by that date, the security will be removed immediately thereafter; provided, however, in all cases Nasdaq will provide at least seven calendar days from the date of the notification for the issuer to request review pursuant to paragraph (f)(2), below, before removal of the security.

(2) The issuer may request a review of Nasdaq's determination by a hearing panel under the Rule 9700 Series, as modified herein. Nasdaq must receive the issuer's request for review at least two days prior to the scheduled removal of the securities, together with a \$4,000 hearing fee payable to The Nasdaq Stock Market, Inc. to cover the cost of review. A request for review will stay the removal of the issuer's securities from the Service until the hearing panel issues a decision under Rule 9750. The hearing panel will consider only the issue of whether the security is then eligible for quotation in the Service and shall not have discretion to grant any extensions of time for ineligible securities to become eligible. Notwithstanding any contrary provision in the Rule 9700 Series, hearings will be conducted via telephone and the issuer will be provided at least five business days notice of the hearing unless the issuer waives such notice.

(3) An issuer may request a review of a hearing panel's decision by the Nasdaq Listing and Hearing Review Council under Rule 9760. Such a request for review must be accompanied by a \$4,000 fee payable to The Nasdaq Stock Market, Inc. to cover the cost of review. The Nasdaq Listing and Hearing Review Council will only consider whether the security is then eligible for quotation in the Service and shall not have discretion to grant extensions of time for ineligible securities to become eligible.

⁴ Changes are marked to the rule text that appears in the electronic NASD Manual found at www.nasd.com. No pending rule filings would affect the text of the rules amended herein.

* * * * *

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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

In January 1999, Nasdaq and the NASD adopted amendments to Rules 6530 and 6540 that require all issuers of securities quoted on the OTCBB to be current in their filings with the Commission or other appropriate regulator (the "Eligibility Rule").⁵ When an issuer does not comply with the Eligibility Rule, either because a filing is not made or because a filing is incomplete,⁶ Nasdaq appends a fifth character "E" to the trading symbol of that issuer's securities. This identifier notifies investors and other

⁵ See Securities Exchange Act Release No. 40878 (January 4, 1999), 64 FR 1255 (January 8, 1999) (SR-NASD-98-51). These amendments were fully implemented for all securities quoted on the OTCBB as of June 2000.

⁶ In order for a filing to be complete, it must, for example, contain all required certifications, attestations, and financial statements, including an auditor's review pursuant to SAS-100 (for quarterly reports) or an unqualified auditor's opinion (for annual reports). See, e.g., Rule 13a-14 under the Act, 17 CFR 240.13a-14, and Rules 10-01(d) and 2-02(c) of Regulation S-X, 17 CFR 210.10-01(d) and 2-02(c). In addition, the auditor must be registered with the Public Company Accounting Oversight Board. See Section 102(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7212(a).

market participants that Nasdaq does not have information that the issuer is current in its reporting obligations. If the issuer does not comply within the applicable grace period provided by the Eligibility Rule (typically 30 days), Nasdaq removes the issuer's securities from the OTCBB.⁷

Since late 2000, Nasdaq has permitted OTCBB companies to request review of Nasdaq's determination under the Eligibility Rule before a Listing Qualifications Hearing Panel pursuant to the NASD Rule 9700 Series.⁸ The proposed rule change would provide transparency to the availability of such review and to the scope of such review.

Specifically, the proposed rule would specify that while hearing panels can determine whether the securities of an issuer are eligible for continued quotation because the issuer has, in fact, filed a complete periodic report, they do not have the discretion to allow the securities of delinquent companies to continue to trade on the OTCBB.⁹ Nasdaq believes that this lack of discretion is appropriate given the 30 or 60-day grace period that is already built into the rule. Moreover, there is no significant barrier to re-entry on the OTCBB once a delinquent issuer becomes current in its filings.¹⁰ The proposed rule

⁷ The Eligibility Rule provides a 60-day grace period to banks, savings association and insurance companies that do not file with the Commission, but are required to file with other regulators.

⁸ See High Speed Net Solutions, Inc., Securities Exchange Act Release No. 43434 (Oct. 12, 2000); Palmworks, Inc., Securities Exchange Act Release No. 43423 (Oct. 6, 2000); JD American Workwear, Inc., Securities Exchange Act Release No. 43295 (Sept. 15, 2000).

⁹ If a valid filing is made before the hearing panel's decision is issued, the company would not be rendered ineligible for further quotation on the OTCBB.

¹⁰ In order for an eligible issuer to be re-included on the OTCBB, a market maker must file a Form 211 with the NASD to initiate quotations. Note that pursuant to proposed Rule 6530(e), the securities of a company that is repeatedly late in filing its periodic reports over a two-year period may be ineligible for quotation for one

change notes that the request for review will stay the security's removal until the Panel makes its determination.

Unlike the Rule 4800 Series that governs Nasdaq hearings, the Rule 9700 Series does not provide for a fee to offset Nasdaq's costs to conduct these hearings.¹¹ Given the increasing number of these hearings,¹² Nasdaq believes it appropriate to adopt a fee to offset the associated costs. Specifically, Nasdaq proposes to adopt a \$4,000 fee for companies requesting review by a Listing Qualifications Hearing Panel. Companies that seek review of the panel's decision by the Nasdaq Listing and Hearing Review Council would also be subject to a \$4,000 fee.

Finally, Nasdaq wishes to clarify, following discussions with staff of the Commission's Office of Compliance, Inspections, and Examinations and Division of Market Regulation, that it is implementing changes that will result in the removal of an ineligible security either 30 or 60 days, as applicable, after the filing due date. Currently, such removals are effected either 30 or 60 days, as applicable, after notice of the security's ineligibility is published on the OTCBB Daily List, available at

year, even once that issuer becomes current in its filings. See SR-NASD-2005-11, Securities Exchange Act Release No. 52291 (Aug. 18, 2005), 70 FR 49701 (Aug. 24, 2005).

¹¹ See NASD Rule 4820(c), which requires Nasdaq-listed issuers to submit a \$4,000 fee for a written hearing and a \$5,000 fee for an oral hearing, to cover the cost of holding the hearing, and NASD Rule 4840(b), which requires Nasdaq-listed issuers to submit a fee of \$4,000 to cover the cost of review by the Nasdaq Listing and Hearing Review Council. See also Sections 1203 and 1205 of the Amex Listed Company Guide, which impose similar fees, and Section 804.00 of the NYSE Listed Company Manual, which requires an issuer to submit a \$20,000 fee to request review of a delisting decision by the NYSE staff.

¹² In 2003, Nasdaq received 14 hearing requests for OTCBB issuers. By contrast, in 2004, Nasdaq received 53 hearing requests for OTCBB issuers and from January 1 until July 31, 2005, Nasdaq had already received 110 such requests.

www.otcbb.com.¹³ Further, under the proposed rule change, Nasdaq will send a notice to the address appearing on the issuer's most recent periodic report at least seven calendar days prior to the security's removal, even if the grace period has already expired. At the same time, Nasdaq will publish notice of the expected removal on www.otcbb.com. Nasdaq believes that this minimum period will provide investors, and market participants adequate notice of Nasdaq's determination and allow issuers the opportunity to request review, if so desired.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,¹⁴ in general and with Sections 15A(b)(5) and 15A(b)(6) of the Act,¹⁵ in particular. Section 15A(b)(5) of the Act requires the equitable allocation of reasonable dues, fees, and other charges "among members *and issuers* and other persons using any facility or system." (emphasis added). Currently, Nasdaq is providing certain OTCBB-related services and incurring the associated costs, yet there is no mechanism to properly allocate such costs to the OTCBB issuers that are the most direct beneficiaries of these additional services. The proposed service fees would facilitate proper allocation of costs, as envisioned in the Act, and would compensate Nasdaq for the additional services it is asked to provide. Section 15A(b)(6) requires that Nasdaq's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

¹³ Nasdaq expects to implement this change on approximately November 15, 2005.

¹⁴ 15 U.S.C. 78o-3.

¹⁵ 15 U.S.C. 78o-3(b)(5) and (6).

The proposed clarifications regarding the hearings process will protect investors and the public interest by providing additional transparency to Nasdaq's procedures, while limiting the ability of a company to continue to have its securities quoted on the OTCBB when that company is ineligible due to its failure to file its periodic regulatory reports and provide complete disclosure to investors.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor received.

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

Within 35 days of the date of 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 such 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, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2005-067 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2005-067. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection

and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASD-2005-067 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Jonathan G. Katz
Secretary

¹⁶ 17 CFR 200.30-3(a)(12).

EXHIBIT 4

Additions to rule as proposed in original filing are double underlined. Deletions from rule as originally proposed are ~~stricken through~~.

6530. OTCBB-Eligible Securities

A Member shall be permitted to quote the following categories of securities in the Service:

(a) – (e) No change.

~~(f)(1) The issuer of~~ Upon determining that a security that has been determined to be would be ineligible for quotation in the Service under this Rule 6530 under paragraph (a)(2) or (3) or (4) above upon expiration of the applicable grace period, Nasdaq will send a notification to the address on the cover of the issuer's last periodic report. This notification will state the last day of the applicable grace period, and will indicate that unless the condition causing the ineligibility has been cured by that date, the security will be removed immediately thereafter; provided, however, in all cases Nasdaq will provide at least seven calendar days from the date of the notification for the issuer to request review pursuant to paragraph (f)(2), below, before removal of the security.

~~(2) The issuer may request a review of that~~ Nasdaq's determination by a hearing panel under the Rule 9700 Series, as modified herein. Nasdaq must receive the issuer's request for review at least two days prior to the scheduled removal of the securities, together with a \$4,000 hearing fee payable to The Nasdaq Stock Market, Inc. to cover the cost of review. A request for review will stay the removal of the issuer's securities from the Service until the hearing panel issues a decision under Rule 9750. The hearing panel will consider only the issue of whether the security is then eligible for quotation in the Service and shall not have discretion to grant any extensions of time for ineligible securities to become eligible. Notwithstanding any contrary provision in the Rule 9700 Series, hearings will be conducted via telephone and the issuer will be provided at least five business days notice of the hearing unless the issuer waives such notice.

~~(23) An issuer may request a review of a hearing panel's decision by the Nasdaq Listing and Hearing Review Council within 15 calendar days after the issuance of the panel's decision~~ under Rule 9760. Such a request for review must be accompanied by a \$4,000 fee payable to The Nasdaq Stock Market, Inc. to cover the cost of review. The Nasdaq Listing and Hearing Review Council will only consider whether the security is then eligible for quotation in the Service and shall not have discretion to grant extensions of time for ineligible securities to become eligible.

~~7010. System Services~~

~~(a) — (i)~~ No change

~~(j) OTC Bulletin Board Service~~

~~(1) Position Charge~~

~~The following charge shall apply to a broker/dealer that displays quotations or trading interest in the OTC Bulletin Board service:~~

~~Position Charge — \$6.00/security/month~~

~~(2) Record Keeping Fee~~

~~An issuer quoted in the OTC Bulletin Board that makes a change such as a change to its name, the par value or title of its security, or its symbol shall pay a fee of \$2,500 to The Nasdaq Stock Market, Inc. to affect such change in the OTC Bulletin Board service.~~

~~(k) — (v)~~ No change