

OMB APPROVAL

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

File No. SR - 2005 - 067
Amendment No. 2

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
☐

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.

STEPHANIE DUMONT,

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

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ the National Association of Securities Dealers, Inc. (“NASD”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) Amendment No. 2 to SR-NASD-2005-067 to amend 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.

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

* * * * *

6530. OTCBB-Eligible Securities

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

(a) through (e) No change.

(f)(1) Upon determining that an issuer’s securities would be ineligible for quotation under the rule, NASD 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 securities will be removed immediately thereafter; provided, however, in all cases NASD will provide at least seven calendar days from the date the notification is mailed to the issuer to

¹ 15 U.S.C. 78s(b)(1).

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

(2) The issuer may request a review of the determination by a hearing panel under the Rule 9700 Series, as modified herein. NASD must receive the issuer's request for review at least two business days prior to the scheduled removal of the securities, together with a \$4,000 hearing fee payable to NASD 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 securities are 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 under Rule 9760. Such a request for review must be accompanied by a \$4,000 fee payable to NASD to cover the cost of review. This review will only consider whether the securities are 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.

The proposed rule change will be effective immediately upon SEC approval.

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

(a) Purpose

Rule Filing History

On May 24, 2005, NASD, through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Commission proposed rule change SR-NASD-2005-067, proposing amendments to Rule 6530 and Rule 7010 to clarify the availability of a process to review eligibility determinations under Rule 6530 and to adopt service based fees for OTCBB issuers. On September 27, 2005, Nasdaq filed with the Commission Amendment No. 1 to SR-NASD-2005-067 ("Amendment No. 1"), which proposed to delete the record-keeping fee, among other technical changes. On October 1, 2005, the Commission approved SR-NASD-2005-089, which provided NASD direct authority for OTC equities operations, rather than the prior delegation to Nasdaq. As such, NASD

assumed direct authority for OTC equities operations, including operation of the OTCBB (quotation and trade reporting platform and other services), trade reporting for other non-OTCBB OTC equity securities and other services, and related rulemaking functions.

Given the SEC's approval of SR-NASD-2005-089, NASD is filing this Amendment No. 2 to SR-NASD-2005-067 ("Amendment No. 2") to make certain changes as described herein.

Proposal

In January 1999, Nasdaq and 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").² When an issuer does not comply with the Eligibility Rule, either because a filing is not made or because a filing is incomplete,³ a fifth character "E" is appended to the trading symbol of that issuer's securities. This identifier notifies investors and other market participants that NASD does not have information that the issuer is current in its reporting obligations. If the issuer does not comply within grace period, as applicable,

² 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.

³ 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), the issuer's securities are removed from the OTCBB.⁴

Since late 2000, OTCBB companies have been able to request a review of a determination under the Eligibility Rule before a hearing panel pursuant to the NASD Rule 9700 Series.⁵ 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.⁶ NASD 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.⁷ The proposed rule change notes that the

⁴ 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.

⁵ See High Speed Net Solutions, Inc., Securities Exchange Act Release No. 43434 (October 12, 2000); Palmworks, Inc., Securities Exchange Act Release No. 43423 (October 6, 2000); JD American Workwear, Inc., Securities Exchange Act Release No. 43295 (September 15, 2000).

⁶ 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.

⁷ Unless subject to an exemption, 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. See, e.g., NASD Regulation, Inc. (publicly available December 1, 1998) (exemption for companies going to the OTCBB).

request for review will stay the securities' removal until the panel makes its determination.

Unlike the Rule 4800 Series that governs Nasdaq hearings, the Rule 9700 Series currently does not provide for a fee to offset the costs to conduct these hearings.⁸ Given the increasing number of these hearings,⁹ NASD believes it appropriate to adopt a fee to offset the associated costs. Specifically, NASD proposes to adopt a \$4,000 fee for companies requesting review by a hearing panel. In addition, companies that seek review of the hearing panel's decision would also be subject to an additional \$4,000 fee.

The proposed rule change will be effective immediately upon SEC approval.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act, which requires, among other things, that NASD rules provide for the equitable allocation of reasonable dues, fees and other charges among

Note, however, that pursuant to 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. 52886 (November 16, 2005), 70 FR 70907 (November 23, 2005).

⁸ See NASD Rule 4805(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 4807(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.

⁹ In 2003, 14 hearing requests were received from OTCBB issuers. By contrast, in 2004, 53 hearing requests were received from OTCBB issuers and from January 1 until July 31, 2005, 110 such requests had already been received.

members and issuers and other persons using any facility or system that NASD operates or controls. NASD believes that the proposed rule change will clarify the OTCBB eligibility review eligibility process and the fees associated therewith.

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

NASD 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

NASD 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 or of the Commission

Not applicable.

9. Exhibits

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

Exhibit 4. Exhibit 4 shows the full text of rule change marking changes from the Amendment No. 1, with Amendment No. 1 shown as if adopted, and the new language in

this Amendment No. 2 marked to show additions and deletions.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2005-067)
SELF-REGULATORY ORGANIZATIONS

Proposed Rule Change by National Association of Securities Dealers, Inc.
Relating to Amendments to Rule 6530 to Clarify Review Process for OTCBB Eligibility
Determinations 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 , the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) Amendment No. 2 to the proposed rule change³ as described in Items I, II, and III below, which Items have been prepared by NASD. 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

NASD is proposing to amend 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On May 24, 2005, NASD filed SR-NASD-2005-067 with the Commission. On September 27, 2005, NASD filed with the Commission Amendment No. 1 to SR-NASD-2005-067 that replaced and superseded in its entirety the text of the original rule filing.

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

* * * * *

6530. OTCBB-Eligible Securities

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

(a) through (e) No change.

(f)(1) Upon determining that an issuer's securities would be ineligible for quotation under the rule, NASD 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 securities will be removed immediately thereafter; provided, however, in all cases NASD will provide at least seven calendar days from the date the notification is mailed to the issuer to request review pursuant to paragraph (f)(2) below, before removal of the securities.

(2) The issuer may request a review of the determination by a hearing panel under the Rule 9700 Series, as modified herein. NASD must receive the issuer's request for review at least two business days prior to the scheduled removal of the securities, together with a \$4,000 hearing fee payable to NASD 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

securities are 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 under Rule 9760. Such a request for review must be accompanied by a \$4,000 fee payable to NASD to cover the cost of review. This review will only consider whether the securities are then eligible for quotation in the Service and shall not have discretion to grant extensions of time for ineligible securities to become eligible.

* * * * *

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

In its filing with the Commission, 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. 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

Rule Filing History

On May 24, 2005, NASD, through its subsidiary, The Nasdaq Stock Market, Inc. (“Nasdaq”), filed with the Commission proposed rule change SR-NASD-2005-067, proposing amendments to Rule 6530 and Rule 7010 to clarify the availability of a process to review eligibility determinations under Rule 6530 and to adopt service based fees for OTCBB issuers. On September 27, 2005, Nasdaq filed with the Commission Amendment No. 1 to SR-NASD-2005-067 (“Amendment No. 1”), which proposed to delete the record-keeping fee, among other technical changes. On October 1, 2005, the Commission approved SR-NASD-2005-089, which provided NASD direct authority for OTC equities operations, rather than the prior delegation to Nasdaq. As such, NASD assumed direct authority for OTC equities operations, including operation of the OTCBB (quotation and trade reporting platform and other services), trade reporting for other non-OTCBB OTC equity securities and other services, and related rulemaking functions.

Given the SEC’s approval of SR-NASD-2005-089, NASD is filing this Amendment No. 2 to SR-NASD-2005-067 (“Amendment No. 2”) to make certain changes as described herein.

Proposal

In January 1999, Nasdaq and 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”).⁴ When an issuer does not comply with the Eligibility Rule, either because a filing is not

⁴ 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.

made or because a filing is incomplete,⁵ a fifth character “E” is appended to the trading symbol of that issuer’s securities. This identifier notifies investors and other market participants that NASD does not have information that the issuer is current in its reporting obligations. If the issuer does not comply within grace period, as applicable, provided by the Eligibility Rule (typically 30 days), the issuer’s securities are removed from the OTCBB.⁶

Since late 2000, OTCBB companies have been able to request a review of a determination under the Eligibility Rule before a hearing panel pursuant to the NASD Rule 9700 Series.⁷ 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

⁵ 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).

⁶ 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.

⁷ See High Speed Net Solutions, Inc., Securities Exchange Act Release No. 43434 (October 12, 2000); Palmworks, Inc., Securities Exchange Act Release No. 43423 (October 6, 2000); JD American Workwear, Inc., Securities Exchange Act Release No. 43295 (September 15, 2000).

companies to continue to trade on the OTCBB.⁸ NASD 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.⁹ The proposed rule change notes that the request for review will stay the securities' removal until the panel makes its determination.

Unlike the Rule 4800 Series that governs Nasdaq hearings, the Rule 9700 Series currently does not provide for a fee to offset the costs to conduct these hearings.¹⁰ Given the increasing number of these hearings,¹¹ NASD believes it appropriate to adopt a fee to

⁸ 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.

⁹ Unless subject to an exemption, 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. See, e.g., NASD Regulation, Inc. (publicly available December 1, 1998) (exemption for companies going to the OTCBB).

Note, however, that pursuant to 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. 52886 (November 16, 2005), 70 FR 70907 (November 23, 2005).

¹⁰ See NASD Rule 4805(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 4807(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.

¹¹ In 2003, 14 hearing requests were received from OTCBB issuers. By contrast, in 2004, 53 hearing requests were received from OTCBB issuers and from January 1 until July 31, 2005, 110 such requests had already been received.

offset the associated costs. Specifically, NASD proposes to adopt a \$4,000 fee for companies requesting review by a hearing panel. In addition, companies that seek review of the hearing panel's decision would also be subject to an additional \$4,000 fee.

The proposed rule change will be effective immediately upon SEC approval.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act, which requires, among other things, that NASD rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that NASD operates or controls. NASD believes that the proposed rule change will clarify the OTCBB eligibility review eligibility process and the fees associated therewith.

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

NASD 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 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, 100 F Street, NE, Washington, DC 20549-2001.

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 Room, 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of 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 the 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.¹²

Secretary

¹² 17 CFR 200.30-3(a)(12).

EXHIBIT 4

Exhibit 4 shows the full text of rule change marking changes from Amendment No. 1 to SR-NASD-2005-067 to this Amendment No. 2, with the language in Amendment No. 1 shown as if adopted, and the new language in this Amendment No. 2 marked to show additions and deletions.

Proposed new language is underlined
Proposed deletions are in brackets

* * * *

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 an issuer's securities[security] would be ineligible for quotation under the rule[paragraph (a)(2) or (3) or (4) above upon expiration of the applicable grace period], [Nasdaq]NASD 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 securities[security] will be removed immediately thereafter; provided, however, in all cases [Nasdaq]NASD will provide at least seven calendar days from the date [of] the notification is mailed to[for] the issuer to request review pursuant to paragraph (f)(2)[,] below, before removal of the securities[security].

(2) The issuer may request a review of [Nasdaq's]~~the~~ determination by a hearing panel under the Rule 9700 Series, as modified herein. [Nasdaq]~~NASD~~ must receive the issuer's request for review at least two business days prior to the scheduled removal of the securities, together with a \$4,000 hearing fee payable to [The Nasdaq Stock Market, Inc.]~~NASD~~ 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 securities are~~[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.]~~NASD~~ to cover the cost of review. ~~[The Nasdaq Listing and Hearing Review Council]~~This review will only consider whether the securities are~~[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.