

OMB APPROVAL

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

File No. SR - 2005 - 011

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)(4)	
			☐ 19b-4(f)(2)	☐ 19b-4(f)(5)	
			☐ 19b-4(f)(3)	☐ 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	Arnold	Last Name	Golub
Title	Associate Vice President		
E-mail	arnold.golub@nasdaq.com		
Telephone	(301) 978-8075	Fax	(301) 978-4028

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 06/24/2005

By Edward S. Knight

(Name)

Executive Vice President and General Counsel

(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 EFFF 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

☐

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 limit the eligibility for quotation on the OTCBB of the securities of an issuer that is repeatedly late in filing required periodic reports.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) any domestic equity security that satisfies the requirements of subparagraph (1) and either subparagraph (2) or (3) or (4) below:

(1) – (3) No change

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Nasdaq originally filed the proposal on January 28, 2005. On May 10, 2005, Nasdaq filed Amendment 1, which modified the proposed rule language in response to comments received from the Commission Staff, clarified how Nasdaq will notify issuers about the proposed rule, and changed the proposed effective date. This Amendment 2 addresses further comments received from the Commission Staff and codifies in the proposed rule language that filings for reporting periods ending before June 1, 2005, will not be considered under the proposed rule change.

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 this rule.

(4) the issuer of the security is a bank or savings association (or a holding company for such an entity) that is not required to file reports with the Commission pursuant to Section 13 or 15(d) of the Act and, subject to a sixty calendar day grace period, the issuer of the security is current with all required filings with its appropriate Federal banking agency or State bank supervisor (as defined in 12 U.S.C. 1813).

(b) – (d) No change

(e) [Paragraphs (a)(2) and (3) and (4) above will not apply with respect to any domestic equity security quoted in the Service on the effective date of this rule change until six months after that date.] Notwithstanding the foregoing paragraphs, a member shall not be permitted to quote a security if:

(1) while quoted on the OTCBB, the issuer of the security has failed to file a complete required annual or quarterly report by the due date for such report (including, if applicable, any extensions permitted by SEC Rule 12b-25) three times in the prior two-year period; or

(2) the security has been removed from the OTCBB due to the issuer's failure to satisfy paragraph (a)(2), (3) or (4), above, two times in the prior two-year period.

Following the removal of an issuer's securities pursuant to this paragraph (e), such securities shall not be eligible for quotation until the issuer has timely filed in a complete form all required annual and quarterly reports due in a one-year period. For purposes of this paragraph, a report filed within any applicable extensions permitted by SEC Rule 12b-25 will be considered timely filed. Furthermore, filings for reporting periods ending before June 1, 2005 will not be considered for purposes of this paragraph (e).

* * * * *

2. Procedures of the Self-Regulatory Organization

The Board of Directors of Nasdaq approved the proposed rule change at its meeting on December 15, 2004 and the Board of Governors of the NASD had an opportunity to review the proposed rule change at its meeting on December 16, 2004, 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 in connection with filings for periods ending on or after June 1, 2005.

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

This is an amendment to SR-NASD-2005-011. This Amendment 2 replaces the original filing and Amendment 1 in their entirety to modify the proposed rule language in response to comments received from the Commission Staff, clarify how Nasdaq will notify issuers about the proposed rule, and codify in the proposed rule language that filings for reporting periods ending before June 1, 2005, will not be considered under the proposed rule change.

In January 1999, Nasdaq and the NASD adopted amendments to NASD 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 a security does not comply with the Eligibility Rule, either because a filing is not

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

made or because a filing is incomplete,⁶ Nasdaq appends a fifth character “E” designator to the security’s symbol. This identifier notifies investors and other market participants that the issuer is not 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 Approximately 80% of issuers achieve compliance within the grace period, while 20% are removed.

Nasdaq has identified a high level of non-compliance with the Eligibility Rule. Specifically, over the two year period ended August 31, 2004, Nasdaq identified over 3,000 instances of delinquent or otherwise incomplete filings by 1,806 OTCBB issuers, of which 1,067 were still quoted as of that date. Of the 1,806 issuers, 1,035 were late in filing one time, 548 issuers were delinquent twice and 223 were delinquent three or more times. Given this high rate of recidivism, Nasdaq proposes to make certain securities ineligible for quotation on the OTCBB for a period of one year.

First, Nasdaq proposes to make the securities of those OTCBB issuers that are delinquent in a required filing three times in a two-year period ineligible for quotation on

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., Exchange Act Rule 13a-14, 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). Filings failing to meet any of these criteria are incomplete and the issuer is considered delinquent.

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.

the OTCBB for a period of one year.⁸ The securities of a company will be removed from the OTCBB the third time that the company does not file by the due date (including, if applicable, any extensions permitted by SEC Rule 12b-25) in a two-year period, without the benefit of any grace period for this third delinquency.⁹ In applying the look back associated with this provision, Nasdaq will consider reports whose due dates (including, if applicable, any extensions permitted by SEC Rule 12b-25) were in the prior two-year period.

Second, Nasdaq also proposes to make the securities of those OTCBB issuers whose securities are removed from the OTCBB for failure to file two times in a two-year period ineligible for quotation on the OTCBB for a period of one year.¹⁰ The heightened test for this category reflects the greater length of the filing delinquencies, i.e., these issuers were unable to regain compliance, even within the applicable “grace” period. In

⁸ A filing would not be considered delinquent if made within any applicable extensions permitted under Rule 12b-25. Nasdaq also appends an “E” to a security’s symbol when it does not receive notice that an issuer that files with a regulator other than the Commission has timely filed. Nasdaq will not consider such occurrences to be a delinquent filing for purposes of the proposed rule if the issuer did, in fact, timely file with the appropriate regulator. Nonetheless, these issuers can help alleviate confusion by providing Nasdaq with a copy of the filing made with the appropriate regulator on or before its due date.

⁹ Prior to such removal, Nasdaq intends to provide issuers with 7 calendar days to request review of the determination by a hearings panel. See SR-NASD-2005-067, which proposes to clarify the availability of a process to review eligibility determinations under Rule 6530.

¹⁰ An issuer that is not removed because it files a late report after requesting a hearing pursuant to the Rule 9700 Series but before a decision has been issued in the matter would not be considered to have violated this requirement with respect to that filing, although it would still have filed late for purposes of proposed Rule 6530(e)(1).

applying the look back associated with this provision, Nasdaq will consider the date the security is removed, without regard to when the delinquent reports were actually due.

Under these requirements, only filings for which the grace period ends while the issuer is quoted on the OTCBB will be considered.¹¹ Following its removal for violating one of the proposed requirements, a security would not be eligible for re-inclusion unless the issuer has timely filed all required annual and quarterly reports for a period of one year. Thus, the securities of an issuer could not be re-included for a minimum of one year and the securities of a domestic issuer would not be eligible for re-inclusion until the issuer has timely filed at least one Form 10-K and three Forms 10-Q. Once an issuer that is removed for violating one of the proposed requirements is re-included, Nasdaq would not consider late filings due prior to the date of re-inclusion under the proposed rule.

Nasdaq will implement the proposed rule in connection with filings for periods ending on or after June 1, 2005. Filings for periods ending before June 1, 2005 will not be considered in determining the number of times a company has made late filings. Upon implementation, a company will be provided notification whenever Nasdaq determines that it is late in a periodic filing. Such notice will explain the effect of such a late filing under the proposed rule. Nasdaq will also provide information about the proposed rule on the issuer section of the OTCBB web site, at www.otcbb.com.

¹¹ Thus, for example, an OTCBB-quoted issuer that has no prior late filings fails to file its Form 10-K for the period ended December 31, 2005, prior to the end of the applicable grace period. The issuer is removed from the OTCBB on May 17, 2006, under existing Rule 6530(a)(2), and thereafter also files its Form 10-Q for the period ended March 31, 2006, after the due date. The issuer is subsequently re-included on the OTCBB. Only the late filing for the period ended December 31, 2005, would count for purposes of the proposed rules because the issuer was not quoted on the OTCBB when the grace period for the March 31, 2006 filing expired.

Finally, in this filing, Nasdaq also proposes to clarify its current position that the 60-day grace period applicable to banks and savings associations also applies to holding companies for such entities. This clarification is appropriate because, like banks and savings associations, these holding companies must also file publicly available periodic reports with the appropriate state or federal regulator.

b. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,¹² in general and with Section 15A(b)(6) of the Act,¹³ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is designed to increase the quality and timeliness of disclosure available to investors by OTCBB issuers and to prevent the securities of issuers that repeatedly fail to timely comply with their obligations under the securities laws from being quoted in the OTCBB.

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.

¹² 15 U.S.C. 78o-3.

¹³ 15 U.S.C. 78o-3(b)(6).

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 or 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-2005-011)

June __, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 thereto to Limit the Eligibility for Quotation on the OTCBB of the Securities of an Issuer that is Repeatedly Late in Filing Required Periodic Reports.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹² and Rule 19b-4 thereunder,¹³ notice is hereby given that on January 28, 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 amendments to this filing on May 10, 2005¹⁴ and June 24, 2005¹⁵. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹² 15 U.S.C. 78s(b)(1).

¹³ 17 CFR 240.19b-4.

¹⁴ Amendment 1 modified the proposed rule language in response to comments received from the Commission Staff, clarified how Nasdaq will notify issuers about the proposed rule, and changed the proposed effective date.

¹⁵ Amendment 2 addressed further comments received from the Commission Staff and codified in the proposed rule language that filings for reporting periods ending before June 1, 2005, will not be considered under the proposed rule change.

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

Nasdaq proposes to limit the eligibility for quotation on the OTCBB of the securities of an issuer that is repeatedly late in filing required periodic reports. Nasdaq will implement the proposed rule in connection with filings for periods ending on or after June 1, 2005.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.¹⁶

6530. OTCBB-Eligible Securities

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

(a) any domestic equity security that satisfies the requirements of subparagraph (1) and either subparagraph (2) or (3) or (4) below:

(1) – (3) No change

(4) the issuer of the security is a bank or savings association (or a holding company for such an entity) that is not required to file reports with the Commission pursuant to Section 13 or 15(d) of the Act and, subject to a sixty calendar day grace period, the issuer of the security is current with all required filings with its appropriate Federal banking agency or State bank supervisor (as defined in 12 U.S.C. 1813).

(b) – (d) No change

(e) [Paragraphs (a)(2) and (3) and (4) above will not apply with respect to any domestic equity security quoted in the Service on the effective date of this rule change until six months after that date.] Notwithstanding the foregoing paragraphs, a member shall not be permitted to quote a security if:

(1) while quoted on the OTCBB, the issuer of the security has failed to file a complete required annual or quarterly report by the due date

¹⁶ 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 this rule.

for such report (including, if applicable, any extensions permitted by SEC Rule 12b-25) three times in the prior two-year period; or

(2) the security has been removed from the OTCBB due to the issuer's failure to satisfy paragraph (a)(2), (3) or (4), above, two times in the prior two-year period.

Following the removal of an issuer's securities pursuant to this paragraph (e), such securities shall not be eligible for quotation until the issuer has timely filed in a complete form all required annual and quarterly reports due in a one-year period. For purposes of this paragraph, a report filed within any applicable extensions permitted by SEC Rule 12b-25 will be considered timely filed. Furthermore, filings for reporting periods ending before June 1, 2005 will not be considered for purposes of this paragraph (e).

* * * * *

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 NASD 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").¹⁷

¹⁷ Exchange Act Release No. 40878 (January 4, 1999), 64 FR 1255 (January 8, 1999). These amendments were fully implemented for all securities quoted on the OTCBB as of June 2000.

When a security does not comply with the Eligibility Rule, either because a filing is not made or because a filing is incomplete,¹⁸ Nasdaq appends a fifth character “E” designator to the security’s symbol. This identifier notifies investors and other market participants that the issuer is not 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.¹⁹ Approximately 80% of issuers achieve compliance within the grace period, while 20% are removed.

Nasdaq has identified a high level of non-compliance with the Eligibility Rule. Specifically, over the two year period ended August 31, 2004, Nasdaq identified over 3,000 instances of delinquent or otherwise incomplete filings by 1,806 OTCBB issuers, of which 1,067 were still quoted as of that date. Of the 1,806 issuers, 1,035 were late in filing one time, 548 issuers were delinquent twice and 223 were delinquent three or more times. Given this high rate of recidivism, Nasdaq proposes to make certain securities ineligible for quotation on the OTCBB for a period of one year.

First, Nasdaq proposes to make the securities of those OTCBB issuers that are delinquent in a required filing three times in a two-year period ineligible for quotation on

¹⁸ 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., Exchange Act Rule 13a-14, 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). Filings failing to meet any of these criteria are incomplete and the issuer is considered delinquent.

¹⁹ 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.

the OTCBB for a period of one year.²⁰ The securities of a company will be removed from the OTCBB the third time that the company does not file by the due date (including, if applicable, any extensions permitted by SEC Rule 12b-25) in a two-year period, without the benefit of any grace period for this third delinquency.²¹ In applying the look back associated with this provision, Nasdaq will consider reports whose due dates (including, if applicable, any extensions permitted by SEC Rule 12b-25) were in the prior two-year period.

Second, Nasdaq also proposes to make the securities of those OTCBB issuers whose securities are removed from the OTCBB for failure to file two times in a two-year period ineligible for quotation on the OTCBB for a period of one year.²² The heightened test for this category reflects the greater length of the filing delinquencies, i.e., these issuers were unable to regain compliance, even within the applicable “grace” period. In

²⁰ A filing would not be considered delinquent if made within any applicable extensions permitted under Rule 12b-25. Nasdaq also appends an “E” to a security’s symbol when it does not receive notice that an issuer that files with a regulator other than the Commission has timely filed. Nasdaq will not consider such occurrences to be a delinquent filing for purposes of the proposed rule if the issuer did, in fact, timely file with the appropriate regulator. Nonetheless, these issuers can help alleviate confusion by providing Nasdaq with a copy of the filing made with the appropriate regulator on or before its due date.

²¹ Prior to such removal, Nasdaq intends to provide issuers with 7 calendar days to request review of the determination by a hearings panel. See SR-NASD-2005-067, which proposes to clarify the availability of a process to review eligibility determinations under Rule 6530.

²² An issuer that is not removed because it files a late report after requesting a hearing pursuant to the Rule 9700 Series but before a decision has been issued in the matter would not be considered to have violated this requirement with respect to that filing, although it would still have filed late for purposes of proposed Rule 6530(e)(1).

applying the look back associated with this provision, Nasdaq will consider the date the security is removed, without regard to when the delinquent reports were actually due.

Under these requirements, only filings for which the grace period ends while the issuer is quoted on the OTCBB will be considered.²³ Following its removal for violating one of the proposed requirements, a security would not be eligible for re-inclusion unless the issuer has timely filed all required annual and quarterly reports for a period of one year. Thus, the securities of an issuer could not be re-included for a minimum of one year and the securities of a domestic issuer would not be eligible for re-inclusion until the issuer has timely filed at least one Form 10-K and three Forms 10-Q. Once an issuer that is removed for violating one of the proposed requirements is re-included, Nasdaq would not consider late filings due prior to the date of re-inclusion under the proposed rule.

Nasdaq will implement the proposed rule in connection with filings for periods ending on or after June 1, 2005. Filings for periods ending before June 1, 2005 will not be considered in determining the number of times a company has made late filings. Upon implementation, a company will be provided notification whenever Nasdaq determines that it is late in a periodic filing. Such notice will explain the effect of such a late filing under the proposed rule. Nasdaq will also provide information about the proposed rule on the issuer section of the OTCBB web site, at www.otcbb.com.

²³ Thus, for example, an OTCBB-quoted issuer that has no prior late filings fails to file its Form 10-K for the period ended December 31, 2005, prior to the end of the applicable grace period. The issuer is removed from the OTCBB on May 17, 2006, under existing Rule 6530(a)(2), and thereafter also files its Form 10-Q for the period ended March 31, 2006, after the due date. The issuer is subsequently re-included on the OTCBB. Only the late filing for the period ended December 31, 2005, would count for purposes of the proposed rules because the issuer was not quoted on the OTCBB when the grace period for the March 31, 2006 filing expired.

Finally, in this filing, Nasdaq also proposes to clarify its current position that the 60-day grace period applicable to banks and savings associations also applies to holding companies for such entities. This clarification is appropriate because, like banks and savings associations, these holding companies must also file publicly available periodic reports with the appropriate state or federal regulator.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,²⁴ in general and with Section 15A(b)(6) of the Act,²⁵ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is designed to increase the quality and timeliness of disclosure available to investors by OTCBB issuers and to prevent the securities of issuers that repeatedly fail to timely comply with their obligations under the securities laws from being quoted in the OTCBB.

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.

²⁴ 15 U.S.C. 78o-3.

²⁵ 15 U.S.C. 78o-3(b)(6).

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-2005-011 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-011. 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. 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-2005-011 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.²⁶

Margaret H. McFarland
Deputy Secretary

²⁶ 17 CFR 200.30-3(a)(12).

EXHIBIT 4

Additions to rule as proposed in Amendment 1 are double underlined. Deletions from rule as proposed in Amendment 1 are ~~stricken through~~.

6530. OTCBB-Eligible Securities

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

(a) any domestic equity security that satisfies the requirements of subparagraph (1) and either subparagraph (2) or (3) or (4) below:

(1) – (3) No change

(4) the issuer of the security is a bank or savings association (or a holding company for such an entity) that is not required to file reports with the Commission pursuant to Section 13 or 15(d) of the Act and, subject to a sixty calendar day grace period, the issuer of the security is current with all required filings with its appropriate Federal banking agency or State bank supervisor (as defined in 12 U.S.C. 1813).

(b) – (d) No change

(e) [Paragraphs (a)(2) and (3) and (4) above will not apply with respect to any domestic equity security quoted in the Service on the effective date of this rule change until six months after that date.] Notwithstanding the foregoing paragraphs, a member shall not be permitted to quote a security if:

(A)1) while quoted on the OTCBB, the issuer of the security has failed to file a complete required annual or quarterly report by the due date for such report (including, if applicable, any extensions permitted by SEC Rule 12b-25) three ~~or more~~ times in the prior two-year period; or

(B2) the security has been ~~determined to be ineligible~~ removed from the OTCBB due to the issuer's failure to satisfy paragraph (a)(2), (3) or (4), above, two ~~or more~~ times in the prior two-year period.

Following the removal of an issuer's securities pursuant to this paragraph (e), such securities shall not be eligible for quotation until the issuer has timely filed in a complete form all required annual and quarterly reports due in a one-year period. For purposes of this paragraph, a report filed within any applicable extensions permitted by SEC Rule 12b-25 will be considered timely filed. Furthermore, filings for reporting periods ending before June 1, 2005 will not be considered for purposes of this paragraph (e).