

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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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

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.

On March 22, 2006, NASD filed with the Commission proposed rule change SR-NASD-2006-039, which proposes amendments to (1) amend NASD rules to modify and expand NASD's authority to initiate trading and quotation halts in over-the-counter ("OTC") equity securities; and (2) adopt IM-6660-1 to identify certain factors that NASD may consider in determining, in its discretion, whether imposing a trading and quotation halt in an OTC equity security is appropriate. On May 23, 2006, NASD filed Amendment No. 1 to such proposal.

On June 7, 2006, the Commission published for comment the proposed rule change in the Federal Register.¹ NASD is filing this Partial Amendment No. 2 to SR-NASD-2006-039 to respond to the comments received in response to the publication of Amendment No. 1 in the Federal Register and to make technical corrections to the proposed rule text.

1. Technical Corrections to Rule Text

NASD is incorporating the following technical corrections to the proposed rule text to reflect the approval order issued by the SEC for SR-NASD-2005-087 that became effective on August 1, 2006², and two other technical corrections to the proposed rule text that were included in the rule text language published in the Federal Register. The full text of the proposed rule change is attached hereto as Exhibit 5.

The rule changes proposed in the initial rule filing and Amendment No. 1 are underlined; deletions are [bracketed]. The technical corrections in this Amendment No. 2 are double-underlined; deletions in this Amendment No. 2 are [[double-bracketed]]. Only changed text is described.

1. Add the word "Equity" to the title of the proposed rule text.

[6545]6660. Trading and Quotation Halt in OTC[BB-Eligible] Equity Securities

2. Insert the word "ADR" as part of the deleted text in proposed Rule 6660(a)(1):

(1) the OTC[BB] Equity S[s]ecurity or the security underlying an

¹ See Securities Exchange Act Release No. 53920 (June 1, 2006), 71 Fed. Reg. 33026 (June 7, 2006) (SR-NASD-2006-039).

² See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 Fed. Reg. 38935 (July 10, 2006) (SR-NASD-2005-087) (Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Relating to Amendments to the NASD's Rules Following the Nasdaq Exchange's Operation as a National Securities Exchange for Nasdaq UTP Plan Securities).

American Depository Receipt (“ADR”) that is an OTC Equity Security (“OTC ADR”) [the OTCBB ADR] is listed on or registered with a foreign securities exchange or market, and the foreign securities exchange, market, or regulatory authority overseeing such issuer, exchange, or market, halts trading in such security for regulatory reasons because of public interest concerns (“Foreign Regulatory Halt”); provided, however, that NASD will not impose a trading and quotation halt if the Foreign Regulatory Halt was imposed solely for material news, a regulatory filing deficiency, or operational reasons; [or]

3. Delete references to “The Nasdaq Stock Market” in proposed Rule 6660(a)(2) to reflect the approval order issued by the SEC for SR-NASD-2005-087 that became effective on August 1, 2006³:

(2) the OTC[BB] Equity S[s]ecurity or the security underlying [the] an American Depository Receipt (“ADR”) that is an OTC Equity Security (“OTC ADR”) [the OTCBB ADR] is a derivative or component of a security listed on or registered with a national securities exchange[[, The Nasdaq Stock Market,]] or foreign securities exchange or market (“listed security”) and the national securities exchange[[, The Nasdaq Stock Market]], or foreign securities exchange or market[[,]] imposes a trading halt in the listed security; or

II. Response to Comments

The Commission received one comment letter in response to the publication of the proposed rule change in the Federal Register.⁴ The commenter raised several issues that are addressed below.

The commenter states that the proposal to increase the trading and quotation halt from a period of up to five business days to ten business days may result in unwarranted harm to investors. The commenter notes that a trading halt for a period of greater than four days will cause the security to lose “piggyback eligibility” under SEC Rule 15c2-11 of the Act,⁵ and require market makers in the security to file a Form 211 to resume trading in the security. The commenter argues that the Form 211 review process “frequently takes weeks or months to complete” and as a result, a trading halt for greater than four business days “as a practical matter will cause a security to stop trading for a

³ Id.

⁴ See comment letter, dated July 10, 2006, from R. Cromwell Coulson, Chief Executive Officer, Pink Sheets LLC, to Nancy M. Morris, Secretary, SEC (“Comment Letter”).

⁵ 17 CFR 240.15c2-11.

much longer period of time, and with the passage of time, may result in the complete elimination of a trading market in that security.”⁶

NASD believes that extending the authority for a trading and quotation halt to ten business days is appropriate and furthers investor protection. SEC Rule 15c2-11 of the Act requires, among other things, that a broker-dealer review certain specified documents and information about an issuer and have a reasonable basis under the circumstances for believing the information is accurate in all material respects before the broker-dealer can publish any quotation for the issuer’s security. Under such SEC Rule, if a particular security has been quoted at least 12 days within the previous 30 calendar days, with no more than four business days in succession without a quotation, other market makers can “piggyback” on market quotes on such security without having to conduct an independent review of issuer information.

NASD believes that where a trading and quotation halt is imposed, it is critical to *require market makers to review current information regarding the issuer*. Proposed Rule 6660 would impose a trading and quotation halt, among other things, where NASD determines that an extraordinary event has occurred or is ongoing that has had a material effect on the market for the OTC Equity Security. Under such circumstances, “restarting” the requirements of SEC Rule 15c2-11 ensures that market makers have a reasonable basis, based on currently available information, to publish a quotation for the security in question. NASD staff reviews Form 211 submissions promptly upon receipt and if the required documentation is provided, the review can be completed expeditiously. In addition, NASD notes that at the cessation of a trading halt, trading will be permitted to resume. Although market makers may not be permitted to quote a security prior to the completion of the SEC Rule 15c2-11 process, trading in the security would not be restricted.

NASD also believes this “restart” is consistent with the SEC’s authority pursuant to Section 12(k) of the Act. When a temporary trading suspension order is issued by the Commission pursuant to Section 12(k) of the Act for a security, the automatic ten business-day suspension results in a “restart” of the requirements of SEC Rule 15c2-11.

The commenter also states that the proposed trading and quotation halt authority should be applied more than just “sparingly.” In the initial rule filing, NASD stated that it intends to exercise the proposed trading and quotation halt authority in very limited circumstances to protect the market and investors. NASD recognizes that imposing a trading and quotation halt on a security can have a potentially serious impact on the trading market for such security. As a result, NASD believes that this authority should not be used liberally any time there is a “problem” with a security. Rather, NASD has clearly delineated the circumstances under which it would exercise its authority and will only do so where necessary to protect the market and investors.

⁶ See Comment Letter.

The commenter further states that NASD's proposed trading halt authority is not subject to administrative or judicial review. The commenter states that this denies due process to interested persons who are adversely affected by such halt as they have no forum to which they can appeal NASD's determination to halt trading in a particular security.

NASD believes that the authority to halt quotation and trading of OTC Equity Securities is consistent with its statutory obligations as a self-regulatory organization pursuant to, among others, Section 15A(b)(11) of the Act to "ensure fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations."⁷ There are numerous determinations that NASD staff makes on a daily basis in connection with the operation of the OTC market, such as establishing ex-dividend dates, issuing trading symbols, closing of when issued contracts, etc. Such determinations are not (and should not be) subject to a hearing process. These types of decisions require certainty and finality so that the marketplace can operate fairly and efficiently.

In addition, NASD believes there are practical obstacles to implementing a review process. The commenter suggests that "persons adversely affected by the trading halt can complain" and need to have a forum in which they can be heard. When a trading halt is imposed, the group of persons who may believe they are "adversely affected" can be widespread. For example, this group can include the issuer, its shareholders, debt holders, market makers, broker-dealers, buyers and sellers, clearing firms, etc. If any of these persons can demand review of a trading halt, then such a demand likely can be expected after every NASD determination to halt trading.

Further, it is unclear what the commenter believes would be deemed an adverse effect, but if such adverse effect is the "restart" of the SEC Rule 15c2-11 process, implementing a hearing process will not provide the relief the commenter suggests. A hearing process, if adopted, would not act to stay the trading halt nor would it stay the clock under SEC Rule 15c2-11. Therefore, if a hearing process is not started and completed within 5 days, the Form 211 process will automatically be "restarted" in accordance with SEC Rule 15c2-11. Finally, NASD, as a self-regulatory organization, operates under the oversight of the SEC and that this oversight authority acts to ensure that NASD apply its rules, including the proposed trading halt authority, generally to protect investors and the public interest.

Finally, the commenter states that the term "Foreign Regulatory Halt" as defined in Rule 6660 should include Canadian provincial exchange or markets. NASD believes that the definition of "Foreign Regulatory Halt" in proposed Rule 6660(a)(1) is broad enough to include Canadian provincial exchanges or markets. The term is defined to include "a foreign securities exchange or market, and the foreign securities exchange, market, or regulatory authority overseeing such issuer, exchange, or market, halts trading

⁷ See 17 CFR 240.15A(b)(11).

in such security for regulatory reasons because of public interest concerns (“Foreign Regulatory Halt”); provided however, that NASD will not impose a trading and quotation halt if the Foreign Regulatory Halt was imposed for material news, a regulatory filing deficiency, or operational reasons.”

III. Accelerated Approval of Amendment No. 2

NASD requests that the Commission find good cause pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 to approve proposed Amendment No. 2 prior to the 30th day after publication in the Federal Register. The proposed rule change proposes technical corrections to conform to the proposal as published in the Federal Register.

Exhibit 5

Proposed additions are underlined.
Proposed deletions are in [brackets].

* * * * *

[6545]6660. Trading and Quotation Halt in OTC[BB-Eligible] Equity Securities

(a) Authority for Initiating a Trading and Quotation Halt

In circumstances in which it is necessary to protect investors and the public interest, NASD may direct members, pursuant to the procedures set forth in paragraph (b), to halt trading and quotations in OTC Equity Securities (as such term is defined in Rule 6610) [the over-the-counter ("OTC") market of a security or an American Depository Receipt ("ADR"), that is included in the OTC Bulletin Board ("OTCBB")] if:

(1) the OTC[BB] Equity S[s]ecurity or the security underlying an American Depository Receipt ("ADR") that is an OTC Equity Security ("OTC ADR")[the OTCBB ADR] is listed on or registered with a foreign securities exchange or market, and the foreign securities exchange, market, or regulatory authority overseeing such issuer, exchange, or market, halts trading in such security for regulatory reasons because of public interest concerns ("Foreign Regulatory Halt"); provided, however, that NASD will not impose a trading and quotation halt if the Foreign Regulatory Halt was imposed solely for material news, a regulatory filing deficiency, or operational reasons; [or]

(2) the OTC[BB] Equity S[s]ecurity or the security underlying [the]an OTC[BB] ADR is a derivative or component of a security listed on or registered with a national securities exchange or foreign securities exchange or market ("listed security"), and the national securities exchange, or foreign securities exchange or market imposes a trading halt in the listed security[.]; or

(3) NASD determines that an extraordinary event has occurred or is ongoing that has had a material effect on the market for the OTC Equity Security or has caused or has the potential to cause major disruption to the marketplace and/or significant uncertainty in the settlement and clearance process. [the issuer of the OTCBB security or the security underlying the OTCBB ADR fails to comply with the requirements of SEC Rule 10b-17 regarding Untimely Announcements of Record Dates.]

(b) Procedure for Initiating a Trading and Quotation Halt

(1) When a halt is initiated under subparagraph (a)(1) of this rule, upon receipt of information from a foreign securities exchange or market on which the OTC[BB] Equity S[s]ecurity or the security underlying the OTC[BB] ADR is listed or registered, or from a regulatory authority overseeing such issuer, exchange, or market, NASD will promptly evaluate the information and determine whether a trading and quotation halt in the OTC[BB] Equity S[s]ecurity is appropriate.

(2) Should NASD determine that a basis exists under this rule for initiating a trading and quotation halt, the commencement of the trading and quotation halt will be effective simultaneous with the issuance of appropriate public notice.

(3) Trading and quotations in the OTC market may resume when NASD determines that the basis for the halt no longer exists, or when ~~[five]~~ten business days have elapsed from the date NASD initiated the trading and quotation halt in the security, whichever occurs first. NASD shall disseminate appropriate public notice that the trading and quotation halt is no longer in effect.

(c) Violation of OTC[BB] Trading and Quotation Halt Rule

If a security is subject to a trading and quotation halt initiated pursuant to this rule, it shall be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110 for a member:

(1) to effect, directly or indirectly, a trade in such security; or

(2) to publish a quotation, a priced bid and/or offer, an unpriced indication of interest (including "bid wanted" and "offer wanted" indications), or a bid or offer accompanied by a modifier to reflect unsolicited customer interest, in any quotation medium. For purposes of this rule, "quotation medium" shall mean any: system of general circulation to brokers or dealers that regularly disseminates quotations of identified brokers or dealers; or publication, alternative trading system or other device that is used by brokers or dealers to disseminate quotations to others.

* * * * *

IM-6660-1 Factors to be Considered When Initiating a Trading and Quotation Halt

NASD may impose a trading and quotation halt in an OTC Equity Security pursuant to Rule 6660(a)(3) where NASD determines, in its discretion, based on the facts and circumstances of the particular event, that halting trading in the security is the appropriate mechanism to protect investors and ensure a fair and orderly marketplace. As a general matter, NASD does not favor imposing a trading and quotation halt in an OTC Equity Security and will exercise this authority in very limited circumstances. In determining whether to impose a trading halt under Rule 6660(a)(3), NASD will consider several factors in making its determination, including but not limited to: (1) the material nature of the event; (2) the material facts surrounding the event are undisputed and not in conflict; (3) the event has caused widespread confusion in the trading of the security; (4) there has been a material negative effect on the market for the subject security; (5) the potential exists for a major disruption to the marketplace; (6) there is significant uncertainty in the settlement and clearance process for the security; and/or (7) such other factors as NASD deems relevant in making its determination. NASD may review all or some of these factors as it determines appropriate.

* * * * *