

Reorganization will be tax-free for each Series and its shareholders; and (d) applicants will receive from the Commission an exemption from section 17(a) of the Act for the Reorganization. Applicants agree not to make any material changes to the Agreement without prior Commission approval.

9. The plan may be terminated and the Reorganization abandoned at any time by mutual consent of the respective Boards of the Acquired Series and the Acquiring Series.

10. Definitive proxy solicitation materials were filed with the Commission on September 9, 1998 and mailed to shareholders of the Acquired Series on September 11, 1998. A special meeting of shareholders is scheduled for October 16, 1998.

#### **Applicants' Legal Analysis**

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by or under common control with the other person, and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Acquiring and Acquired Series may be deemed affiliated persons and thus the Reorganization may be prohibited by section 17(a).

2. Rule 17a-8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants believe that they may not rely on rule 17a-8 in connection with the Reorganization because the Series may be deemed to be affiliated by reason other than having a common investment adviser, common directors, and/or common officers. The Adviser might be deemed to have an indirect pecuniary interest in the performance of

the assets held by the 1st Source Plans. Because the 1st Source Plans own 5% or more of the outstanding voting securities of each of the Acquired Series, each Acquiring Series may be deemed an affiliated person of an affiliated person of each Acquired Series for a reason other than having a common investment adviser.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to consummate the Reorganization. Applicants submit that the Reorganization satisfies the standards of section 17(b) of the Act. Applicants believe that the terms of the Reorganization are fair and reasonable and do not involve overreaching. Applicants state that the Reorganization will be based on the relative NAVs of the Series' shares. Applicants also state that the applicable Acquiring Series were created for the express purpose of acquiring the assets and liabilities of the corresponding Acquired Series, and that their investment objectives, policies and restrictions were established to be identical to those of the corresponding Acquired Series. In addition, applicants state that the Boards, including a majority of the Independent Trustees, have made the requisite determinations that the participation of the relevant Series in the proposed Reorganization is in the best interests of each Series and that such participation will not dilute the interests of shareholders of the Series.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 98-26374 Filed 10-1-98; 8:45 am]

BILLING CODE 8010-01-M

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-40473; File No. SR-NASD-98-66]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc.; Relating to Small Order Execution System Tier Size Classifications**

September 24, 1998.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on September 2, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq.<sup>2</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The NASD is submitting this filing to reclassify Nasdaq National Market ("NNM") securities into appropriate tier sizes for purposes of determining the maximum size order for a particular security eligible for execution through Nasdaq's Small Order Execution System ("SOES"). Specifically, under the proposal, 488 NNM securities will be reclassified into a different SOES tier size effective October 1, 1998. Since the NASD's proposal is an interpretation of existing NASD rules, there are no language changes.

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

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> On September 2, 1998, Nasdaq filed an amendment to the proposed rule change that replaced a previously submitted filing. See Letter from Robert E. Aber, Senior Vice President and General Counsel, Office of the General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated September 1, 1998 ("Amendment No. 1").

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*

The purpose of this filing is to reclassify NNM securities into appropriate tier sizes for purposes of determining the maximum size order for a particular security eligible for execution through SOES. Nasdaq periodically reviews the SOES tier size applicable to each NNM security to determine if the trading characteristics of the issue have changed so as to warrant a tier size adjustment. Such a review was conducted using data as of June 30, 1998, pursuant to the following established criteria:<sup>3</sup>

(1) a 1,000 share maximum order size shall apply to NNM securities on SOES with an average daily non-block volume of 3,000 shares or more a day, a bid price of less than or equal to \$100, and three or more market makers;

(2) a 500 share maximum order size shall apply to NNM securities on SOES with an average daily non-block volume of 1,000 shares or more a day, a bid price of less than or equal to \$150, and two or more market makers; and

(3) a 200 share maximum order size shall apply to NNM securities with an average daily non-block volume of less than 1,000 shares a day, a bid price of less than or equal to \$250, and two or more market makers.

Pursuant to the application of this classification criteria, 488 NNM securities will be reclassified effective October 1, 1998. These 488 NNM securities are set out in the NASD's Notice to Members 98-76 (September 1998).<sup>4</sup>

In ranking NNM securities pursuant to the established classification criteria, Nasdaq followed the changes dictated by the criteria with three exceptions. First, an issue was not moved more than one tier size level. For example, if an issue was previously categorized in the 1,000-share tier size, it would not be permitted to move to the 200-share tier even if the reclassification criteria

showed that such a move was warranted. Second, for securities priced below \$1 where the reranking called for a reduction in tier size, the tier size was not reduced. Third, for the top 50 Nasdaq securities based on market capitalization, the SOES tier sizes were not reduced regardless of whether the reranking called for a tier-size reduction.

Nasdaq believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act.<sup>5</sup> Section 15A(b)(6)<sup>6</sup> requires, among other things, that the rules of the NASD governing the operation of The Nasdaq Stock Market be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. Nasdaq believes that the reassignment of NNM securities into SOES tier sizes commensurate with the trading characteristics of a particular security facilitates the entry and execution of appropriately sized orders in SOES.

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

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Comments were neither solicited nor received.

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

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the administration and enforcement of an existing rule and, therefore, has become effective immediately pursuant to section 19(b)(3)(A)(i) of the Act<sup>7</sup> and subparagraph (e)(1) of Rule 19b-4 under the Act.<sup>8</sup>

At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public

interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>9</sup>

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-98-66 and should be submitted by October 23, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 98-26234 Filed 10-1-98; 8:45 am]

BILLING CODE 8010-01-M

**SOCIAL SECURITY ADMINISTRATION**

**Information Collection Activities: Proposed Collection Requests and Comment Requests**

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), as well as information collection packages submitted to OMB for clearance, in compliance with Pub. L. 104-13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

I. The information collection(s) listed below require(s) extension(s) of the current OMB approval(s) or are proposed new collection(s):

1. Employer Report of Special Wage Payments—0960-0565. SSA gathers the

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

<sup>6</sup> *Id.*

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>8</sup> 17 CFR 240.19b-4(e)(1).

<sup>9</sup> In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>3</sup> See NASD Rule 4710(g).

<sup>4</sup> Previously, Nasdaq market makers were required to maintain a minimum quotation size for an NNM security in an amount equal to the maximum SOES order size for that security. See generally, NASD Rule 4613(a) (1)-(2). The Commission approved an amendment to NASD Rule 4613(a)(1)(C) reducing the minimum quotation size for all Nasdaq securities to one normal trading unit when the market maker is not displaying a limit order, thus eliminating the requirement that market makers quote a size equal to the maximum SOES order size. See Securities Exchange Act Release No. 40211 (July 15, 1998), 63 FR 39322 (July 22, 1998).