

("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 19, 1995,¹ the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or Commission) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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

The NASD is proposing to amend Article III, Section 46 of the Rules of Fair Practice to provide that where the issuer of a security declares a cash dividend or other distribution of less than one cent (\$.01) members will not adjust open orders for such securities. Below is the text of the proposed rule change. Proposed new language is *italics*.

Rules of Fair Practice

Article III

Adjustment of Open Orders

Sec. 46.

(a) A member holding an open order from a customer or another broker/dealer shall, prior to executing or permitting the order to be executed, reduce, increase or adjust the price and/or number of shares of such order by an amount equal to the dividend, payment or distribution, on the day that the security is quoted ex-dividend, ex-rights, ex-distribution or ex-interest, *except where a cash dividend or distribution is less than one cent (\$.01)*, as follows:

(i) In the case of a cash dividend or distribution, the price of the order shall be reduced by subtracting the dollar amount of the dividend or distribution from the price of the order and rounding the result to the next lower $\frac{1}{8}$ of a dollar;

(ii) In the case of a stock dividend or split, the price of the order shall be reduced by rounding the dollar value of the stock dividend or split to the next higher $\frac{1}{8}$ of a dollar and subtracting that amount from the price of the order; provided, further, that the size of the order shall be increased by (1) multiplying the size of the original order by the numerator of the ratio of the dividend or split, (2) dividing the result

by the denominator of the ratio of the dividend or split, and (3) rounding the result to the next lower round lot; and

(ii) In the case of a dividend payable in either cash or securities at the option of the stockholder, the price of the order shall be reduced by the dollar value of the cash or securities, whichever is greater, according to the formulas in (a)(i) or (a)(ii), above; provided, that if the stockholder opts for securities, the size of the order shall be increased pursuant to the formula in (a)(ii), above.

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 in Item IV below. The 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

Article III, Section 46 of the Rules of Fair Practice requires members holding open orders to proportionally reprice such orders according to the value of the dividend or distribution on the date the security is quoted ex-dividend, ex-rights, ex-distribution or ex-interest. Shortly after the rule became effective in September 1994, several member firms questioned the necessity of complying with Section 46 if a dividend or other distribution was less than one cent (\$.01).

The NASD has examined the matter and determined that where dividends of less than one cent (\$.01) are involved inefficiencies and costs associated with complying with Section 46 may exceed any benefit to be gained. The impact of such a small dividend on the price of the security is probably *de minimis* in nature and the likelihood that unadjusted orders will result in bad executions for customers is low. Accordingly, the NASD is proposing to amend Section 46 to state that where a dividend or other distribution is less than one cent (\$.01) the price of the order shall not be adjusted.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the

Act² in that the elimination of the costs and inefficiencies associated with mandating the repricing of orders where the dividend or distribution is less than one cent (\$.01) will refine the functioning of Section 46 to the benefit of the market and investors.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The 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 (iii) 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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

¹ The NASD originally submitted the proposed rule change on May 23, 1995. On June 19, 1995, the NASD submitted Amendment No. 1 which amendment made technical changes to the proposal.

² 15 U.S.C. 78o-3