

F. Effective Date of the Proposed Rule Change

The rule change will apply to filings that become effective with the Commission on or after January 1, 1996. Thus, offerings filed with the Corporate Financing Department of the NASD that have not become effective with the Commission prior to January 1, 1996 will be required to comply with the rule change, regardless of whether the Corporate Financing Department has previously issued an opinion that it has no objections to the terms and arrangements.

III. Comments

The Commission received one comment⁹ in response to its publication of notice in the Federal Register. In addition, the NASD received four comments¹⁰ in response to its solicitation of comment from its membership.¹¹ Generally, all the commenters opposed the proposal.

All the significant arguments raised by the commenters were summarized and responded to by the NASD in its proposal and were included in the Commission's notice of publication and solicitation of comment. Generally, commenters expressed concern that the NASD is unnecessarily interfering with the contractual relationship between the issuer and the underwriter, who are free to negotiate a termination of the right if they so desire. For example, one commenter argued that the NASD should limit its role to general review of the level of underwriting compensation and not regulation of the "method, manner, nature, timing and other matters relat[ed] to [underwriting] compensation."¹²

IV. Discussion

The Commission believes that the rule change is consistent with the requirements of Section 15A of the Act and the rules and regulations thereunder applicable to the NASD and, therefore, has determined to approve the proposal. Section 15A requires that the

rules of the NASD, among other things, be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.¹³

The Commission believes this proposal strikes an appropriate balance by allowing underwriters and issuers to continue to negotiate compensation agreements tailored to the needs of the parties while protecting issuers and investors from excessive and unfair payment arrangement under these agreements. The Commission agrees that issuers and underwriters should be allowed to enter into compensation arrangements which include compensation for terminating a right of first refusal. The Commission believes, however, that the NASD's proposal to place certain limits on the terms of these provisions will further the protection of issuers and investors and, thus, the public interest.

V. Conclusion

For the reasons discussed, the Commission finds that the rule change is consistent with the Act and the rules and regulations thereunder applicable to the NASD, in a particular, Section 15A(b)(6).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-NASD-95-29 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-24796 Filed 10-4-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-36296; File No. SR-NASD-95-37]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendments No. 1, 2 and 3 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Listing and Trading of Broad-Based Index Warrants on The Nasdaq Stock Market

September 28, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is

hereby given that on August 28, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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 the NASD. The NASD filed Amendment No. 1 ("Amendment No. 1") to the proposed rule change on September 22, 1995.¹ On September 27, 1995, the NASD filed Amendment No. 2 ("Amendment No. 2") to the proposal.² On September 28, 1995, the NASD filed Amendment No. 3 ("Amendment No. 3") to the proposal.³ This Order approves the proposed rule change, as amended, on an accelerated basis and also solicits comments on the proposed rule change, as amended, from interested persons.

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

The NASD is proposing several changes to its rules to accommodate the trading of the index warrants based on broad-based indexes on The Nasdaq Stock Market ("Nasdaq"). The proposed changes augment and enhance the Association's regulatory requirements applicable to index warrants which were previously approved by the Commission in June 1992.⁴ In addition, unlike the current regulatory structure for index warrants whereby the Commission separately approves each type of index warrant for trading (*i.e.*, Hong Kong Index warrants or Nikkei Index warrants), the proposed changes streamline the approval process for index warrants by providing that an index is eligible to underlie an index warrant traded through the facilities of the Nasdaq system once the Commission has approved such index to underlie an index warrant or option.

Specifically, the NASD proposes the following rule amendments. First, Section 2(c)(2) of Part III of Schedule D

¹ Letter from Joan C. Conley, Corporate Secretary, NASD, to Michael Walinskas, SEC, dated September 22, 1995. Amendment No. 1, which is superseded, in part, by Amendment No. 2, raises position limits on the Russell 2000 Index and S&P MidCap 400 Index ("MidCap Index"). It also establishes that Section 13, Liquidation of Positions, will apply to short sales in warrants.

² Letter from T. Grant Callery, Vice President and General Counsel, NASD, to Michael Walinskas, SEC, dated September 27, 1995. Amendment No. 2 reduces the position limits on the MidCap Index to 7.5 million warrants.

³ Letter from Joan C. Conley, Corporate Secretary, NASD, to Michael Walinskas, SEC, dated September 28, 1995. Amendment No. 3 clarifies the settlement methodology to be utilized for index warrants.

⁴ See Securities Exchange Act Release No. 30773 (June 3, 1992), 57 FR 24835 (June 11, 1992) ("Index Warrant Approval Order").

⁹ Letter from Perry L. Taylor, Jr., Chairman, Capital Markets Committee, Securities Industry Association, to Jonathan G. Katz, Secretary, SEC (Aug. 29, 1995).

¹⁰ Letters from Stuart N. Kingoff, Associate Corporate Counsel, Lew Lieberbaum and Co., Inc. (Nov. 18, 1994); Lawrence B. Fisher, Kelley Drye and Warren (Nov. 30, 1994); and Bachner, Tally, Polevoy and Misher (Nov. 30, 1994), to Joan C. Conley, Secretary, NASD, and letter from Richard P. Woltman, President, Spelman & Co., Inc., to Jonathan G. Katz, Secretary, SEC (Nov. 16, 1994).

¹¹ NASD Notice to Members 94-82 (Oct. 1994).

¹² Letter from Perry L. Taylor, Jr., Chairman, Capital Markets Committee, Securities Industry Association, to Jonathan G. Katz, Secretary, SEC (Aug. 29, 1995).

¹³ 15 U.S.C. 78o-3(b)(6) (1988).

¹⁴ 17 CFR 200.30-3(a)(12) (1994).