

its By-laws, Rules, or Procedures through December 31, 1998.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposals are consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes of Philadep (File No. SR-Philadep-97-04), of DTC (File No. SR-DTC-97-16), and of NSCC (File No. SR-NSCC-97-08) and the portion of SCCP's proposed rule change dealing with its entering into the Agreement (File No. SR-SCCP-97-04) be and hereby are approved.

It is further Ordered, pursuant to Section 19(b)(2) of the Act, that the portion of SCCP's proposed rule change that amends its By-laws, Rule, or Procedures (File No. SR-SCCP-97-04) be and hereby is approved through December 31, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39442; File No. SR-NASD-97-78]

Self-Regulatory Organizations; Order Granting Partial Approval on an Accelerated Basis of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Amended Interpretation of IM-8310-2, Release of Disciplinary Information

December 11, 1997.

I. Introduction

On October 17, 1997, National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change which amends the Interpretation on the Release of Disciplinary Information, IM-8310-2 of Rule 8310 of the Procedural Rules of the

NASD ("Interpretation" or "IM-8310-2"). A notice of the proposed rule change was published in the **Federal Register** on November 21, 1997.³ The Commission, to date, has received no comment letters on the proposed rule change. For the reasons discussed below, the Commission is granting partial accelerated approval of the proposed rule change.

In its notice, filed on October 17, 1997, the NASD Regulation, Inc. ("NASDR") proposed to amend IM-8310-2 to include the phrase "electronic inquiry" in the rule language so that it could respond to electronic inquiries, as well as written or telephonic inquiries. In the notice, the NASDR also proposed to amend the rule language to include the additional information required to be reported on the amended Forms U-4, U-5, and BD. The NASDR has requested that the Commission approve, on an accelerated basis, only that portion of the amended rule language that allows it to respond to electronic inquiries.⁴ Hence, the Commission is partially approving, on an accelerated basis, that portion of the NASDR's request which will give the NASD the option of responding to the electronic inquiries of persons or entities requesting employment and disciplinary history of its members and their associated persons.

II. Description of Proposal

Under the NASD's Public Disclosure Program ("PDP"),⁵ the NASD, in response to a written inquiry or telephonic inquiry via a toll-free telephone listing, releases certain information contained in the Central Registration Depository ("CRD") regarding the employment and disciplinary history of its members and their associated persons. When an inquiry is made, if the broker-dealer or associated person has a disciplinary history, the NASD responds by sending the inquirer a copy of the disclosable information (e.g., information regarding past and present employment history with Association members).⁶ If there is no history, the NASD responds by

informing the caller of this and following up with a written record of same, if so requested.⁷

In past months, the NASD has undertaken a reassessment of the CRD to take advantage of developing technology and to improve its performance meeting the NASD's changing business needs. As a result of this reassessment, the NASD determined that the Internet should be a component of its PDP. In an effort to expand its PDP and make it more accessible and convenient for investors, the NASD's proposal amends the Interpretation to enable the NASD to receive electronic inquiries as well as written and telephonic inquiries.⁸

III. Discussion

NASDR has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act,⁹ for approving, prior to the 30 day after publication in the **Federal Register**, that part of the proposed rule change that permits the NASD to respond to electronic inquiries.¹⁰ The Commission has reviewed the NASDR's proposed rule change and believes, for reasons set forth below, that the proposal is consistent with the requirements of the Act¹¹ and the rules and regulations thereunder applicable to the NASD. Specifically, the Commission believes the proposal is consistent with Sections 15A(b)(6) and 15A(i) of the Act. Section 15A(b)(6) provides in relevant part that the rules of the association be designed to foster cooperation and coordination with persons engaged in regulating and processing information with respect to securities and not to permit unfair discrimination among customers, issuers, brokers or dealers. Section 15A(i) of the Act requires the Association to promptly respond in writing to inquiries regarding disciplinary actions involving its members or associated persons.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. By amending IM-

⁷ If the request is written and there is no disclosable history, a record indicating same is sent to the inquirer.

⁸ See *supra* note 3.

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ See *supra* note 4.

¹¹ In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. The ability to use electric media will most likely enhance efficiency by decreasing the time between when the request is made and when the response is received. Additionally, the ready accessibility of CRD information should positively affect competition in the marketplace; disciplinary histories will be more accessible to the public. 15 U.S.C. 78c(f).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Rel. No. 39322 (Nov. 13, 1997), 62 FR 62391.

⁴ Telephone conversation with Alden S. Adkins, General Counsel and Mary M. Dunbar, Assistant General Counsel, NASDR, and Belinda Blaine, Associate Director, Katherine A. England, Assistant Director, and Mignon McLemore, Staff Attorney, Division of Market Regulation, November 26, 1997.

⁵ See Securities Exchange Act Rel. No. 30629 (April 23, 1992), 57 FR 18535 (April 30, 1992); and Securities Exchange Act Rel. No. 32568 (July 1, 1993), 58 FR 36723 (July 8, 1993).

⁶ See *supra* note 3. The notice contains a complete list of disclosable disciplinary information.

8310-2 to include the phrase "electronic inquiry," the NASD has made it easier and more convenient for interested persons to inquire about the employment and disciplinary history of its members and their associated persons. The Commission commends any effort made to improve investor access to information that could help investors determine whether to conduct or continue to conduct business with a particular broker-dealer or associated person. The Commission understands, however, that the NASD intends to disseminate responses to some inquiries electronically. As with developing and instituting information systems technology, the Commission expects the NASD, consistent with its statutory duties, to assure itself that security concerns (*i.e.*, the security of its systems and the immutability of the records after transmittal) have been addressed. Thus, in granting this partial accelerated approval, the Commission notes that it is approving only the NASD's ability to respond to electronic inquiries as if they were either written or telephonic inquiries.

Based on the foregoing, the Commission deems it appropriate to partially approve the proposed rule change on an accelerated basis, pursuant to Section 19(b) of the Act and the rules and regulations thereunder.¹²

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹³ that the aforementioned portion of proposed rule change SR-NASD-97-78 be, and hereby is, approved.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39441; File No. SR-NASD-97-83]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Listing Fees for Nasdaq National Market Issuers

December 11, 1997.

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 November 13,

1997, 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 ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.¹ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The NASD is proposing to amend NASD Rule 4510 to revise the annual fees for Nasdaq National Market issuers and to make conforming changes to Rule 4520. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

Rule 4510. The Nasdaq National Market

(a) Entry Fee

(1) When an issuer submits an application for inclusion of any class of its securities in the Nasdaq National Market, it shall pay to The Nasdaq Stock Market, Inc.:

(A) a one-time company listing fee of \$5,000 (which shall include a \$1,000 non-refundable processing fee); and

[(B) for each class of security listed, a fee calculated on a graduated rate of \$.005 per share for the first 5 million shares, \$.0025 per share for each share between 5,000,001 and 15 million, inclusive, and \$.001 per share for each share over 15 million, based on the total number of shares outstanding. Entry fees paid by a company for all classes of securities listed on the Nasdaq National Market, regardless of the date those securities are listed, shall not exceed \$50,000 (inclusive of the \$5,000 company listing fee).²]

(B) a fee calculated on total shares outstanding according to the following schedule:

*Up to 1 million shares—\$29,525
1+ to 2 million shares—\$33,750
2+ to 3 million shares—\$43,750
3+ to 4 million shares—\$48,750
4+ to 5 million shares—\$55,000*

¹ On December 3, 1997, the NASD, through Nasdaq, submitted Amendment No. 1 to the filing. See letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 3, 1997.

² [For purposes of the Rule 4500 Series, the term "shares" shall include common and preferred stock, American Depositary Receipts (ADRs), warrants, partnership interests, or any other security listed on the Nasdaq National Market.]

*5+ to 6 million shares—\$58,725
6+ to 7 million shares—\$61,875
7+ to 8 million shares—\$64,375
8+ to 9 million shares—\$67,875
9+ to 10 million shares—\$70,625
10+ to 11 million shares—\$73,875
11+ to 12 million shares—\$76,625
12+ to 13 million shares—\$79,875
13+ to 14 million shares—\$82,000
14+ to 15 million shares—\$83,500
15+ to 16 million shares—\$85,500
Over to 16 million shares—\$90,000*

[The entry fee shall be based on the total number of] *Total shares* outstanding means the aggregate of all classes of equity securities [of the class] to be included in the Nasdaq National Market as shown in the issuer's most recent periodic report or in *more recent information held by Nasdaq* or, in the case of new issues, as shown in the offering circular, required to be filed with the issuer's appropriate regulatory authority. [and received by The Nasdaq Stock Market, Inc.]

(3) no change

(4) no change

(b) Additional Shares

(1) The issuer of each class of security, other than the American Depositary Receipts, which is listed in the Nasdaq National Market shall pay to The Nasdaq [National] Stock Market, Inc. the fee set forth in subparagraph (2) below in connection with the issuance of additional shares of each class of listed security set forth in subparagraph (3) below.

(2) no change

(3) no change

(4) Payment of the fee to The Nasdaq Stock Market, Inc. shall be included with the issuer notification to [the Association] *Nasdaq* of the issuance of additional shares of securities as required under provisions of Rule 4310(c)(17) and Rule [4320(e)(16)] *4320(e)(15)*.

(c) Annual Fee—Domestic and Foreign Issues

(1) As of January 1, [1993] *1998*, the issuer of each class of securities that is a domestic or foreign issue listed in the Nasdaq National Market shall pay to The Nasdaq Stock Market, Inc. an annual fee [(comprised of a base annual fee and a variable annual fee) to be computed as follows:] *calculated on total shares outstanding according to the following schedule:*

[(A) The base annual fee shall be calculated on total shares outstanding³ according to the following schedule:
Up to 1 million shares—\$5,250

³ Total shares outstanding shall be the aggregate of all classes of securities listed on the NNM calculated at year end.

¹² 15 U.S.C. 78s.

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).