

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45137; File No. SR-NASD-2001-48]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. To Clarify That the Nasdaq Limited Partnership Qualitative Listing Requirements Are Applicable to Limited Partnerships Listed on Both the National Market and the SmallCap Market

December 6, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ notice is hereby given that on August 7, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its 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 Nasdaq. 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 proposed rule change clarifies that Nasdaq's limited partnership qualitative listing requirements are applicable to limited partnerships listed on both the National Market and the SmallCap Market. Nasdaq is also proposing to make a conforming change to Marketplace Rule 4350. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

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4350. Qualitative Listing Requirements for Nasdaq National Market and Nasdaq SmallCap Market Issuers Except for Limited Partnerships [traded on the Nasdaq National Market]

(a)-(l) No change

4470. Qualitative Listing Requirements for Nasdaq National Market Issuers That Are Limited Partnerships

Renumbered as Rule 4360 and amended as follows:

4360. Qualitative Listing Requirements for Nasdaq [National Market] Issuers That Are Limited Partnerships

(a) No change

(b) Distribution of Annual and Interim Reports

(1) Each [NNM] issuer that is a limited partnership shall distribute to limited partners copies of an annual report containing audited financial statements of the limited partnership. The report shall be distributed to limited partners within a reasonable period of time after the end of the limited partnership's fiscal year end and shall be filed with Nasdaq at the time it is distributed to limited partners.

(2)(A) Each [NNM] issuer that is a limited partnership which is subject to SEC Rule 13a-13 shall make available copies of quarterly reports including statements of operating results to limited partners either prior to or as soon as practicable following the partnership's filing of its Form 10-Q with the Commission. Such reports shall be distributed to limited partners if required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement. If the form of such quarterly report differs from the Form 10-Q, the issuer shall file one copy of the report with Nasdaq in addition to filing its Form 10-Q pursuant to Rule 4310(c)(14). The statement of operations contained in quarterly reports shall disclose, at a minimum, any substantial items of an unusual or nonrecurrent nature and net income before and after estimated federal income taxes or net income and the amount of estimated federal taxes.

(B) Each [NNM] issuer that is a limited partnership which is not subject to SEC Rule 13a-13 and which is required to file with the Commission, or another federal or state regulatory authority, interim reports relating primarily to operations and financial position, shall make available to limited partners reports which reflect the information contained in those interim reports. Such reports shall be distributed to limited partners if required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement. Such reports shall be distributed to limited partners either before or as soon as practicable following filing with appropriate regulatory authority. If the form of the interim report provided to limited partners differs from that filed with the regulatory authority, the issuer shall file one copy of the report to limited partners with Nasdaq in addition to the report to the regulatory authority that is filed with Nasdaq pursuant to Rule 4310(c)(14).

(c)-(d) No change

(e) Partner Meetings

An [NNM] issuer that is a limited partnership shall not be required to hold an annual meeting of limited partners unless required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement.

(f)-(g) No change

(h) Listing Agreement

Each [NNM] issuer that is a limited partnership shall execute a Listing Agreement in the form designated by Nasdaq.

(i) Conflict of Interest

Each [NNM] issuer which is a limited partnership shall conduct an appropriate review of all related party transactions on an ongoing basis and shall utilize the Audit Committee or a comparable body of the Board of Directors or the review of potential material conflict of interest situations where appropriate.

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

In its filing with the Commission, Nasdaq 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. 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

1. Purpose

The purpose of the proposed rule change is to clarify that Nasdaq's limited partnership qualitative listing requirements are applicable to limited partnerships listed on both the National Market and the SmallCap Market. The limited partnership qualitative listing standards were initially adopted in 1993 for limited partnerships listed on the National Market.² Limited partnerships listed on the SmallCap Market were not required to comply with these qualitative standards as there were no corporate governance requirements for SmallCap Market issuers at that time. Although corporate governance requirements were subsequently implemented for the SmallCap Market

² Securities Exchange Act Release No. 32250 (April 30, 1993), 58 FR 27601 (May 10, 1993).

¹ 15 U.S.C. 78s(b)(1).

in 1997,³ the limited partnership rules have not been updated to reflect this change. As such, Nasdaq is proposing to amend its Marketplace Rules in order to clarify that the limited partnership qualitative listing standards apply to all limited partnerships listed on Nasdaq.

Nasdaq is also proposing to make a conforming change to Marketplace Rule 4350.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act⁴ in that the proposal is designed to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest. As previously mentioned, Nasdaq is proposing to amend its limited partnership qualitative listing standards in order to provide greater clarity and transparency for issuers, their counsel and investors.

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

Nasdaq 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.

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

Nasdaq has neither solicited nor received written comments on the proposed rule change.

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 (ii) 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, DC 20549-0609. 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 submission should refer to file number SR-NASD-2001-48 and should be submitted by January 3, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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TENNESSEE VALLEY AUTHORITY

Patton Island Bridge and Approaches Crossing the Tennessee River and Connecting the Cities of Florence and Muscle Shoals, Colbert and Lauderdale Counties, AL

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Issuance of Supplemental Record of Decision.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR part 1500 to 1508) and TVA's procedures implementing the National Environmental Policy Act. TVA has decided to issue an approval to the Alabama Department of Transportation under section 26a of the TVA Act for the relocation and modification of 2,270 feet of Sweetwater Creek. The purpose of the relocation is to allow construction of the northern approaches to the Patton Island Bridge across the Tennessee River. TVA previously adopted the Final Environmental Impact Statement, Project DE-0026(801), Patton Island Bridge and Approaches Crossing the Tennessee River and Connecting the Cities of Florence and Muscle Shoals, Colbert and Lauderdale Counties, (FEIS) prepared by the State of Alabama

Highway Department in Cooperation with the Department of Transportation, Federal Highway Administration. A Notice of TVA's adoption of this FEIS and of TVA's issuance of the Record of Decision to adopt the "Build" alternative in the FEIS was given in the **Federal Register** of September 29, 1994.

FOR FURTHER INFORMATION CONTACT: Harold M. Draper, NEPA Specialist, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee 37902-1499; telephone (865) 632-6889 or e-mail hmdraper@tva.gov.

SUPPLEMENTARY INFORMATION: Under the "build" alternative identified in the FEIS, a multi-lane highway would be built across the Tennessee River. On September 20, 1994, TVA issued a Record of Decision (ROD) for its adoption of the "build" alternative. The build alternative required approval for the Patton Island Bridge crossing under section 26a of the TVA Act, and approval for a permanent easement over 63.7 acres of TVA land for construction, operation, and maintenance of a new highway across the Muscle Shoals Reservation and Pickwick Reservoir lands. This previous ROD appeared at 59 FR 49738 (September 29, 1994). The Alabama Department of Transportation has now requested approval for construction of an additional segment of the Patton Island project. The additional segment would require approval under section 26a of the TVA Act for a channel relocation and two culverts affecting 2270 feet of Sweetwater Creek. The impacts of this segment were evaluated in the 1991 FEIS and have been verified by TVA in issuing this supplemental ROD.

Alternatives Considered

The previously adopted EIS evaluated five alternative corridors for a new multi-lane road between Muscle Shoals and Florence. In the Patton Island Corridor, two alternatives were considered. North of the Patton Island Bridge, two alternatives were considered. Because construction of the Patton Island bridge has been underway for several years, TVA re-evaluated the no action alternative and the two action alternatives considered in the 1991 FEIS for completion of the remainder of the project. Under No Action, the Patton Island Expressway would end at the northern side of the River and not continue to Florence Boulevard (US 43-72), which is a logical terminus. The two action alternatives are:

1A. Build along a corridor designated "Alternative A." North of the Tennessee River and in the vicinity of Sweetwater

³ Securities Exchange Act Release No. 38961 (August 22, 1997), 62 FR 45895 (August 29, 1997).

⁴ 15 U.S.C. 78o-3(b)(6).

⁵ 17 CFR 200.30-3(a)(12).