

The use of certificates can result in significant delays and expenses in processing securities transactions and can raise safety concerns associated with lost, stolen, and forged certificates. The concerns associated with lost certificates was dramatically demonstrated during the September 11, 2001, tragedy when tens of thousands of certificates maintained in broker-dealers' vaults either were destroyed or were unavailable for transfer.

Accordingly, for the reasons stated above the Commission finds that the rule change, which clarifies that DTC's rules only permit it to honor its participants' requests to withdraw securities, is consistent with section 17A of the Act.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A(b)(3)(F) 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 change (File No. SR-DTC-2003-02) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶⁷

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47982; File No. SR-NASD-2003-80]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. to Codify the Policy of the Nasdaq Market Operations Review Committee With Respect to Review Panels

June 4, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 6, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"),

timeframes as well as within any future shortened settlement cycle.

⁶⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. On June 2, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit 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

Nasdaq proposes to codify the policy of the Nasdaq Market Operations Review Committee with respect to the use of review panels. Below is the text of the proposed rule change. New text is in *italics*.

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4612. Primary Nasdaq Market Maker Standards

(a)-(h) No change.

Cross Reference—IM-11890-2, Review by Panels of the MORC

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4619. Withdrawal of Quotations and Passive Market Making

(a)-(e) No change.

Cross Reference—IM-11890-2, Review by Panels of the MORC

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4620. Voluntary Termination of Registration

(a)-(d) No change.

Cross Reference—IM-11890-2, Review by Panels of the MORC

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4710. Participant Obligations in NNMS

(a)-(e) No change.

Cross Reference—IM-11890-2, Review by Panels of the MORC

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11890. Clearly Erroneous Transactions

(a)-(d) No change.

IM-11890-1. Refusal to Abide by Rulings of a Nasdaq Officer or the MORC

It shall be considered conduct inconsistent with just and equitable principles of trade for any member to

³ See letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated May 30, 2003 ("Amendment No. 1"). In Amendment No. 1, Nasdaq added cross-references to proposed new IM-11890-2 to the text of related rules. For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on June 2, 2003, when Amendment No. 1 was filed.

refuse to take any action that is necessary to effectuate a final decision of a Nasdaq officer or the MORC under Rule 11890.

IM-11890-2. Review by Panels of the MORC

For purposes of Rule 11890 and other NASD rules that permit review of Nasdaq decisions by the MORC, a decision of the MORC may be rendered by a panel of three or more members of the MORC, provided that no more than 50 percent of the members of any panel are directly engaged in market making activity or employed by a member firm whose revenues from market making activity exceed ten percent of its total revenues.

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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 this rule filing is to codify the existing practice of the Market Operations Review Committee (the "MORC") with respect to convening panels of its members to undertake reviews of Nasdaq decisions that are subject to review by the MORC. The MORC is a standing committee selected by the Nasdaq Board of Directors. Under the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (the "Delegation Plan"), however, no more than 50 percent of the MORC's members may be directly engaged in market making activity or employed by a member firm whose revenues from market making activity exceed ten percent of its total revenues. At this time, five members of the MORC are market maker representatives under the standard established by the Delegation Plan, while the remaining nine members of the MORC are not. Currently, the MORC's primary function is to review Nasdaq's decisions to nullify or modify clearly erroneous