

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and Rule 19b-4(f)(2) thereunder<sup>10</sup> because it establishes or changes a due, fee or other charge. At any time within 60 days after filing of this proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609. Comments should be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NASD-2003-174. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. 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 submissions should refer to file number SR-NASD-2003-174 should be submitted by January 5, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-48880; File No. SR-NASD-2003-145]**

#### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To Give Authority to a 3-Member Subcommittee of NASD's Market Regulation Committee to Review Alternative Display Facility System Outage and Denial of Excused Withdrawal Determinations**

December 4, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 25, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with 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 NASD. On November 24, 2003, and December 2, 2003, NASD filed Amendment Nos. 1<sup>3</sup> and 2<sup>4</sup> to the proposed rule change, respectively. 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**

NASD is proposing to amend NASD Rules 4300A and 4619A(g) to give jurisdiction to a 3-member subcommittee of NASD's Market Regulation Committee ("MRC") to review system outage determinations

under Rule 4300A(f) and excused withdrawal denials under Rule 4619A, respectively.

The proposed rule change would apply during the time that the NASD Alternative Display Facility operates on a pilot basis. The Commission previously approved the ADF as a nine-month pilot to quote and trade only Nasdaq-listed securities.<sup>5</sup> The Commission subsequently approved an extension of the pilot until January 26, 2004.<sup>6</sup> The text of the proposed rule is set forth below. Proposed new language is italicized; proposed deletions are in brackets.

\* \* \* \* \*

4300A. Quote and Order Access Requirements.

(a) through (e) No change.

(f) Procedures for Reviewing System Outages

(1) through (4) No change.

(5) A Market Participant may appeal a determination made under paragraph (e)(3) to a *three-member subcommittee comprised of current or former industry members of NASD's Market Regulation [Alternative Display Facility Market Operations Review] Committee* in writing, via facsimile or otherwise, by the close of business on the day a determination is rendered pursuant to paragraph (e)(3). An appeal to the *subcommittee [Committee]* shall operate as a stay of the determination made pursuant paragraph (e)(3). Once a written appeal has been received, the Market Participant may submit any additional supporting written documentation, via facsimile or otherwise, up until the time the appeal is considered by the *subcommittee [Committee]*. The *subcommittee [Committee]* shall render a determination by the close of business following the day a notice of appeal is received. The *subcommittee's [Committee's]* determination shall be final and binding.

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4619A. Withdrawal of Quotations and Passive Market Making

(a) through (f) No change.

(g) A *three-member subcommittee comprised of current or former industry members of NASD's [Alternative Display Facility Operations Review] Market Regulation Committee* shall have jurisdiction over proceedings brought by market makers seeking review of a denial of an excused withdrawal

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> NASD filed a new Form 19b-4, which replaces and supersedes the original filing in its entirety.

<sup>4</sup> Letter from Philip A. Shaikun, Office of General Counsel, Regulatory Policy and Oversight, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 2, 2003 ("Amendment No. 2"). Amendment No. 2 deletes the following sentence from Exhibit 1 to the Form 19b-4: "NASD has designated the proposed rule change as concerned solely with administration of the self-regulatory organization under Section 19(b)(3)(A)(iii) of the Act and Rule 19b-4(f)(3) thereunder, which renders the proposal effective upon receipt of this filing by the Commission."

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002).

<sup>6</sup> Securities Exchange Act Release No. 47633 (April 10, 2003), 68 FR 19043 (April 17, 2003).