

the Act,¹¹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. The proposed rule change recognizes the economies of scale and scope associated with higher volumes of trade reports, and will make it more economical for many market participants to use ACT for reporting their trading activity in exchange-listed securities. The proposed rule change is similar in structure to discounts implemented by Nasdaq for Nasdaq-listed stocks within the past year.¹²

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, as amended.

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

Written comments were neither solicited nor received.

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

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act¹³ and subparagraph (f)(2) of Rule 19b-4 thereunder,¹⁴ because it establishes or changes a due, fee, or other charge imposed by NASD. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such 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 proposal 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 may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-NASD-2003-170. 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 hardcopy 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-2003-170 and should be submitted by January 14, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-31645 Filed 12-23-03; 8:45 am]
BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48933; File No. SR-NASD-2002-168]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Order Granting Approval of Proposed Rule Change and Amendment No. 1, Thereto, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2, Thereto, Relating to Proposed NASD Rule 2130 Concerning the Expungement of Customer Dispute Information From the Central Registration Depository System

December 16, 2003.

I. Introduction and Description of the Proposal

On November 19, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with 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 that would: (1) Require all directives to expunge customer dispute information from the Central Registration Depository ("CRD" or "CRD system") to be confirmed by or ordered by a court of competent jurisdiction; (2) require member firms and associated persons seeking expungement to name NASD as an additional party in any judicial proceeding seeking expungement relief or confirming an arbitration award containing expungement relief; and (3) permit member firms and associated persons to ask NASD to waive the requirement to name NASD as a party on the basis that the expungement order meets at least one of the standards for expungement articulated in the proposed rule.

On January 28, 2003, NASD submitted Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended, was published for comment in the **Federal Register** on March 10, 2003.⁴ The Commission received 28 comments on the proposal from a wide range of sources. The NASD responded to these comments by amending the filing on September 11, 2003.⁵ This order approves the proposed rule change, as amended by Amendment No. 1. In addition, the Commission is publishing a notice to solicit comment on and is simultaneously approving, on an accelerated basis, Amendment No. 2 to the proposal. Below is the text of the proposed rule change, as amended by Amendment No. 2. Deletions of the proposed rule text, which was published in the Notice, appear in [brackets]; proposed rule language to be added by Amendment No. 2 appears in *italics*.

* * * * *

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter, dated January 28, 2003, from Patrice M. Gliniecki, Vice President and Deputy General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1").

⁴ See Securities Exchange Act Release No. 47435 (March 4, 2003), 68 FR 11435 ("Notice").

⁵ See letter from Shirley H. Weiss, Associate General Counsel, Office of the General Counsel, NASD, to Jonathan G. Katz, Secretary, Commission (September 11, 2003) ("Amendment No. 2"). In Amendment No. 2, the NASD made certain changes to its proposed rule text in response to comments received by the Commission in connection with the filing. The Amendment No. 2 rule text changes are published in their entirety and discussed at length below.

¹¹ 15 U.S.C. 78o-3(b)(5).

¹² See Securities Exchange Act Release Nos. 47661 (April 10, 2003), 68 FR 19045 (April 7, 2003) (SR-NASD-2003-51) and 47919 (May 23, 2003), 68 FR 32788 (June 2, 2003) (SR-NASD-2003-86).

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4(f)(2).

¹⁵ 17 CFR 200.30-3(a)(12).