

prevent the current ADF pilot program from lapsing. The Commission finds good cause for the proposed rule change to become operative prior to the 30th day after the date of publication of notice of filing thereof because the proposed rule change is to prevent the benefits provided by the current ADF pilot program from lapsing.¹²

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2004-160 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2004-160. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 the filing also will be available for inspection and copying at the principal offices of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number NASD-2004-160 and should be submitted on or before November 26, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50606; File No. SR-NASD-2004-074]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Clarify and Modify Market Maker Quote Re-Entry Obligations

October 29, 2004.

On April 28, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("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 to NASD Rule 4620 to clarify and modify market maker quote re-entry obligations in the event that a quote is withdrawn by Nasdaq's systems because of a dividend application or a trading halt. On August 31, 2004, Nasdaq filed Amendment No. 1 to the proposed rule change. The **Federal Register** published the proposed rule change, as amended, for comment on September 21, 2004.³ The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations

thereunder applicable to a national securities association.⁴ In particular, the Commission believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,⁵ which requires, among other things, that NASD's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change appropriately establishes the time frames by which market makers must re-enter two-sided quotations when quotes are withdrawn by Nasdaq's systems due to dividend applications and trading halts. The Commission notes that, under the proposal, if a market maker failed to enter a new quotation prior to the close of the regular market session on the day of the systems withdrawal or, generally, on the day when trading resumed following a trading halt,⁶ the market maker could be reinstated only when Nasdaq MarketWatch received a request from the market maker prior to the close of regular trading on the next day and Nasdaq MarketWatch determined that the market maker was not attempting to avoid its market making obligations by failing to re-enter a two-sided quotation earlier.⁷

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-NASD-2004-074) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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⁴ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78o-3(b)(6).

⁶ If the resumption of trading following a trading halt occurs when the market is not in regular session, the market maker would need to enter the new two-sided quotation prior to the opening of the next regular session.

⁷ Nasdaq has stated that it will monitor market maker reactivation requests for any pattern of delays that might indicate that a market maker was attempting to avoid its obligations and in such cases will deny immediate reactivation and deem the market maker's registration in the security as having been voluntarily terminated. See Notice.

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹² Rule 19b-4(f)(6) also requires self-regulatory organizations to give written notice of proposed rule changes filed pursuant to this subsection at least five business days prior to filing. NASD complied with this requirement.

¹³ 17 CFR 200.30-3(a)(12).

¹⁴ 15 U.S.C. 78s(b)(1).

¹⁵ 17 CFR 240.19b-4.

¹⁶ Securities Exchange Act Release No. 50372 (September 14, 2004), 69 FR 56468 ("Notice").