

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51356; File No. SR-NASD-2004-159)

March 10, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto to Allow NASD, on a Pilot Basis, to Review Denial of Access Complaints Related to the Alternative Display Facility

On October 22, 2004, the National Association of Securities Dealers, Inc. (“NASD”) filed with 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 allow NASD, on a pilot basis, to review denial of access complaints related to the Alternative Display Facility (“ADF”). On January 11, 2005, NASD filed Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended, was published in the Federal Register on February 4, 2005.⁴ The Commission received no comments on the proposal.

The proposed rule change would establish on a pilot basis new NASD Rule 4400A, which would give NASD the authority to receive and review complaints against an NASD Market Participant alleging denial of direct or indirect access of the NASD Market Participant’s quotations in the ADF that the NASD Market Participant is required to provide pursuant to NASD Rule 4300A. In addition, proposed NASD Rule 4400A would set forth procedures for reviewing such complaints and would delegate authority to NASD’s Market Regulation Committee to review denial of access determinations rendered in accordance with Rule 4400A.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the NASD clarified the scope of authority it and the Market Regulation Committee would have to review denials of access.

⁴ See Securities Exchange Act Release No. 51092 (January 28, 2005), 70 FR 6061.

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.⁵ In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,⁶ which requires, among other things, that the rules of an association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

New NASD 4400A affords some due process to a party claiming that an NASD Market Participant quoting ADF has denied it access to the NASD Market Participant's system. Establishing such a process should help deter improper denials of access. The Commission believes that it is reasonable and consistent with the Act for NASD to deter such denials by requiring an NASD Market Participant to respond to a complaint in the manner set forth in the new rule. Furthermore, where such deterrence is not effective, NASD will have the authority to direct the NASD Market Participant to restore the complainant's access promptly, which should

⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78o-3(b)(6).

help minimize any market disruption caused by an improper denial of access.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-NASD-2004-159), as amended, be hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

J. Lynn Taylor
Assistant Secretary

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).