

OMB APPROVAL

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2004 - 174
Amendment No.

Proposed Rule Change by National Association of Securities Dealers
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial ☒ Amendment ☐ Withdrawal ☐

Section 19(b)(2) ☒ Section 19(b)(3)(A) ☐ Section 19(b)(3)(B) ☐

Rule

Pilot ☐ Extension of Time Period
for Commission Action ☐ Date Expires

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Exhibit 2 Sent As Paper Document
☐

Exhibit 3 Sent As Paper Document
☐

Description

Provide a brief description of the proposed rule change (limit 250 characters).

Proposed amendment to Rule 2212 (Telemarketing) regarding the frequency of updates from the national do-not-call registry.

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Gary Last Name Goldsholle
Title Associate General Counsel
E-mail gary.goldsholle@nasd.com
Telephone (202) 728-8104 Fax (202) 728-8264

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 11/24/2004

By Patrice Gliniecki
(Name)

Senior Vice-President and Deputy General Counsel

(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

PATRICE GLINIECKI,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information

Add

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

Add

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

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Exhibit 3 - Form, Report, or Questionnaire

Add

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

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Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”), the National Association of Securities Dealers, Inc. (“NASD”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend NASD Rule 2212 to require a member that seeks to qualify for the safe harbor set forth in Rule 2212 to, among other things, use a process to prevent telephone solicitations to any telephone number in a version of the national do-not-call registry obtained from the administrator of the registry no more than thirty-one (31) days prior to the date any call is made. This proposed amendment is consistent with recent amendments to the comparable do-not-call rules of the Federal Trade Commission (“FTC”) and the Federal Communications Commission (“FCC”). Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

2200. COMMUNICATIONS WITH CUSTOMERS AND THE PUBLIC

2210. Communications with the Public

* * * * *

2212. Telemarketing

(a) No Change.

(b) No Change.

(c) Safe Harbor Provision

(1) - (3) No Change.

(4) Accessing the national do-not-call database. The member uses a

process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than [three months] thirty-one (31) days prior to the date any call is made, and maintains records documenting this process.

(d) - (g) No Change.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of NASD Regulation, Inc. by Action of November 1, 2004, which authorized the filing of the rule change with the SEC. The Nasdaq Stock Market and NASD Dispute Resolution were provided an opportunity to consult with respect to the proposed rule change pursuant to the Plan of Allocation and Delegation of Functions by NASD to its Subsidiaries. The Board of Governors of NASD, Inc. had an opportunity to review the proposed rule change at its meeting on November 18, 2004. No other action by NASD is necessary for the filing of this proposed rule change. Section 1(a)(ii) of Article VII of the NASD By-Laws permits the Board of Governors of NASD, Inc. to adopt amendments to NASD Rules without recourse to the membership for approval.

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 30 days following Commission approval. NASD anticipates that the effective date will be January 1, 2005, consistent with the effective

date of the comparable rule amendments made by the FCC and FTC to their respective do-not-call rules.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

In 2003, the FTC, via its Telemarketing Sales Rule, and the FCC, via its Miscellaneous Rules Relating to Common Carriers, established requirements for sellers and telemarketers to participate in a national do-not-call registry.¹ Since June 2003, consumers have been able to enter their home telephone numbers into the national do-not-call registry, which is maintained by the FTC. Under rules of the FTC and FCC, sellers and telemarketers generally are prohibited from making telephone solicitations to consumers whose numbers are listed in the national do-not-call registry. The FCC's do-not-call rules apply to broker-dealers while the FTC's rules do not.²

In July 2003, the SEC requested that NASD amend its telemarketing rules to require NASD members to participate in the national do-not-call registry.³ Because

¹ The do-not-call rules of the FCC and FTC are very similar in terms of substance, in part, because Congress directed the FCC to consult with the FTC to maximize consistency between their respective do-not-call rules. See The Do-Not-Call Implementation Act, 108 P.L. 10, 117 Stat. 557 (Mar. 11, 2003).

² See 15 U.S.C. § 6102(d)(2)(A), which provides that "The rules promulgated by the Federal Trade Commission under subsection (a) shall not apply to ... [among other persons, brokers or dealers]" The FTC's do-not-call rules were promulgated under 15 U.S.C. § 6102. The FCC's rules are not subject to this limitation and apply to all sellers and telemarketers. See NASD Notice to Members 04-15 for a more extensive discussion of the concurrent application of FCC and NASD rules in this area.

³ The Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994 (codified at 15 U.S.C. § 6102) requires the SEC to promulgate telemarketing rules substantially similar to those of the FTC or to direct self-regulatory organizations to promulgate such rules unless the SEC determines that such rules are not in the interest of investor protection.

broker-dealers are subject to the FCC's do-not-call rules, NASD modeled its rules in this area after those of the FCC and codified these do-not-call requirements in Rule 2212, with minor modifications tailoring the rules to broker-dealer activities and the securities industry. The SEC approved these rules in January 2004.⁴

Safe Harbor Provision for the National Do-Not-Call Registry Requirements

The FCC and FTC each provided persons subject to their respective do-not-call rules a “safe harbor” providing that a seller or telemarketer is not liable for a violation of the do-not-call rules that is the result of an error if the seller or telemarketer's routine business practice meets certain specified standards. NASD has provided a parallel safe harbor in paragraph (c) of Rule 2212; this safe harbor is limited to a violation of subparagraph (a)(3) of Rule 2212, which prohibits initiating any telephone solicitation to any person who has registered his or her phone number with the national do-not-call registry.

Today, to be eligible for this Rule 2212 safe harbor, a member or person associated with a member must demonstrate that the member's routine business practice meets four standards. First, the member must have established and implemented written procedures to comply with the national do-not-call rules. Second, the member must have trained its personnel, and any entity assisting it in its compliance, in procedures established pursuant to the national do-not-call rules. Third, the member must have maintained and recorded a list of telephone numbers that the member may not contact. Fourth, the member must use a process to prevent telephone solicitations to any

⁴ Exchange Act Rel. No. 49055 (Jan. 12, 2004); 69 Fed. Reg. 2801 (Jan. 20, 2004) SR-NASD-2003-131.

telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the FTC no more than three months prior to the date any call is made, and must maintain records documenting this process.

Shortly after NASD's rules were approved, Congress instructed the FTC to amend its telemarketing rules to require use of a national do-not-call registry no more than thirty-one days old.⁵ Accordingly, in March 2004, the FTC amended its Telemarketing Sales Rule to require sellers and telemarketers seeking to qualify for the FTC's do-not-call safe harbor to use a version of the national do-not-call registry obtained from the FTC no more than thirty-one days prior to the date any call is made. In August 2004, the FCC adopted a conforming amendment to its Miscellaneous Rules Relating to Common Carriers, requiring that persons who seek to qualify for a similar safe harbor provided in the rule use a version of the national do-not-call registry obtained from the administrator of the national do-not-call registry (i.e., the FTC) no more than thirty-one days prior to the date any call is made.⁶ The FTC and FCC rule amendments take effect on January 1, 2005.

NASD is proposing to amend Rule 2212 to conform to this change in the rules of the FTC and FCC. NASD believes that this change is necessary to maintain the

⁵ 69 Fed. Reg. 16368 (Mar. 29, 2004). The FTC indicated that it was directed to amend its rules by Congress in the Consolidated Appropriations Act of 2004, Public Law 108-199, 188 Stat 3 (requirement in Division B, Title V).

⁶ 69 Fed. Reg. 60311 (Oct. 8, 2004); CG Docket No. 02-278, FCC 04-204 (adopted Aug. 25, 2004; released Sept. 21, 2004). The FCC indicated that while Congress did not direct the FCC to amend its do-not-call rule, it determined to do so, in part, because it is required to consult and coordinate with the FTC with respect to, and maximize the consistency of, their respective do-not-call rules. 69 Fed. Reg. 60313.

consistency between the telemarketing rules of NASD and the FTC and FCC (particularly given that the FCC's rules already directly apply to broker-dealers), and that investors generally expect NASD's telemarketing standards to be comparable to those of the FTC and FCC. Additionally, under The Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994, the SEC has requested that NASD amend its do-not-call rules to conform to the recent amendments to the FTC's do-not-call rules.

NASD's proposed rule change would take effect on January 1, 2005, the effective date of the similar amendments adopted by the FTC and FCC. Accordingly, under the proposed rule change, effective January 1, 2005, an NASD member seeking to qualify for the safe harbor in Rule 2212 would be required to use a process to prevent telephone solicitations to any telephone number in a version of the national do-not-call registry obtained from the administrator of the registry (i.e., the FTC) no more than thirty-one days prior to the date any call is made.

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 30 days following Commission approval.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD rules must 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. NASD believes that the proposed rule change will increase the protection of investors by enabling investors who do not want to receive telephone solicitations to receive the benefits and protections of the national do-not-call registry sooner.

4. **Self-Regulatory Organization's Statement on Burden on Competition**

NASD 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.

5. **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.

6. **Extension of Time Period for Commission Action**

NASD does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

Not applicable.

8. **Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

9. **Exhibits**

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2004-174)
SELF-REGULATORY ORGANIZATIONS

Proposed Rule Change by National Association of Securities Dealers, Inc.
Relating to Frequency of Updates From the National Do-Not-Call Registry

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 , the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend Rule 2212, to require a member that seeks to qualify for the safe harbor set forth in Rule 2212 to, among other things, use a process to prevent telephone solicitations to any telephone number in a version of the national do-not-call registry obtained from the administrator of the registry no more than thirty-one (31) days prior to the date any call is made. This proposed amendment is consistent with recent amendments to the comparable do-not-call rules of the Federal Trade Commission

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(“FTC”) and the Federal Communications Commission (“FCC”). Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

2200. COMMUNICATIONS WITH CUSTOMERS AND THE PUBLIC

2210. Communications with the Public

* * * * *

2212. Telemarketing

(a) No Change.

(b) No Change.

(c) Safe Harbor Provision

(1) - (3) No Change.

(4) Accessing the national do-not-call database. The member uses a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than [three months] thirty-one (31) days prior to the date any call is made, and maintains records documenting this process.

(d) - (g) No Change.

* * * * *

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD 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

In 2003, the FTC, via its Telemarketing Sales Rule, and the FCC, via its Miscellaneous Rules Relating to Common Carriers, established requirements for sellers and telemarketers to participate in a national do-not-call registry.³ Since June 2003, consumers have been able to enter their home telephone numbers into the national do-not-call registry, which is maintained by the FTC. Under rules of the FTC and FCC, sellers and telemarketers generally are prohibited from making telephone solicitations to consumers whose numbers are listed in the national do-not-call registry. The FCC's do-not-call rules apply to broker-dealers while the FTC's rules do not.⁴

³ The do-not-call rules of the FCC and FTC are very similar in terms of substance, in part, because Congress directed the FCC to consult with the FTC to maximize consistency between their respective do-not-call rules. See The Do-Not-Call Implementation Act, 108 P.L. 10, 117 Stat. 557 (Mar. 11, 2003).

⁴ See 15 U.S.C. § 6102(d)(2)(A), which provides that "The rules promulgated by the Federal Trade Commission under subsection (a) shall not apply to ... [among other persons, brokers or dealers]" The FTC's do-not-call rules were promulgated under 15 U.S.C. § 6102. The FCC's rules are not subject to this limitation and apply to all sellers and telemarketers. See NASD Notice to Members 04-15 for a more extensive discussion of the concurrent application of FCC and NASD rules in this area.

In July 2003, the SEC requested that NASD amend its telemarketing rules to require NASD members to participate in the national do-not-call registry.⁵ Because broker-dealers are subject to the FCC's do-not-call rules, NASD modeled its rules in this area after those of the FCC and codified these do-not-call requirements in Rule 2212, with minor modifications tailoring the rules to broker-dealer activities and the securities industry. The SEC approved these rules in January 2004.⁶

Safe Harbor Provision for the National Do-Not-Call Registry Requirements

The FCC and FTC each provided persons subject to their respective do-not-call rules a “safe harbor” providing that a seller or telemarketer is not liable for a violation of the do-not-call rules that is the result of an error if the seller or telemarketer's routine business practice meets certain specified standards. NASD has provided a parallel safe harbor in paragraph (c) of Rule 2212; this safe harbor is limited to a violation of subparagraph (a)(3) of Rule 2212, which prohibits initiating any telephone solicitation to any person who has registered his or her phone number with the national do-not-call registry.

Today, to be eligible for this Rule 2212 safe harbor, a member or person associated with a member must demonstrate that the member's routine business practice meets four standards. First, the member must have established and implemented written

⁵ The Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994 (codified at 15 U.S.C. § 6102) requires the SEC to promulgate telemarketing rules substantially similar to those of the FTC or to direct self-regulatory organizations to promulgate such rules unless the SEC determines that such rules are not in the interest of investor protection.

⁶ Exchange Act Rel. No. 49055 (Jan. 12, 2004); 69 Fed. Reg. 2801 (Jan. 20, 2004) SR-NASD-2003-131.

procedures to comply with the national do-not-call rules. Second, the member must have trained its personnel, and any entity assisting it in its compliance, in procedures established pursuant to the national do-not-call rules. Third, the member must have maintained and recorded a list of telephone numbers that the member may not contact. Fourth, the member must use a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the FTC no more than three months prior to the date any call is made, and must maintain records documenting this process.

Shortly after NASD's rules were approved, Congress instructed the FTC to amend its telemarketing rules to require use of a national do-not-call registry no more than thirty-one days old.⁷ Accordingly, in March 2004, the FTC amended its Telemarketing Sales Rule to require sellers and telemarketers seeking to qualify for the FTC's do-not-call safe harbor to use a version of the national do-not-call registry obtained from the FTC no more than thirty-one days prior to the date any call is made. In August 2004, the FCC adopted a conforming amendment to its Miscellaneous Rules Relating to Common Carriers, requiring that persons who seek to qualify for a similar safe harbor provided in the rule use a version of the national do-not-call registry obtained from the administrator of the national do-not-call registry (i.e., the FTC) no more than thirty-one days prior to the date any call is made.⁸ The FTC and FCC rule amendments take effect on January 1,

⁷ 69 Fed. Reg. 16368 (Mar. 29, 2004). The FTC indicated that it was directed to amend its rules by Congress in the Consolidated Appropriations Act of 2004, Public Law 108-199, 188 Stat 3 (requirement in Division B, Title V).

⁸ 69 Fed. Reg. 60311 (Oct. 8, 2004); CG Docket No. 02-278, FCC 04-204 (adopted Aug. 25, 2004; released Sept. 21, 2004). The FCC indicated that while Congress did not direct the FCC to amend its do-not-call rule, it determined to do so, in part, because it is required to consult and coordinate

2005.

NASD is proposing to amend Rule 2212 to conform to this change in the rules of the FTC and FCC. NASD believes that this change is necessary to maintain the consistency between the telemarketing rules of NASD and the FTC and FCC (particularly given that the FCC's rules already directly apply to broker-dealers), and that investors generally expect NASD's telemarketing standards to be comparable to those of the FTC and FCC. Additionally, under The Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994 the SEC has requested that NASD amend its do-not-call rules to conform to the recent amendments to the FTC's do-not-call rules.

NASD's proposed rule change would take effect on January 1, 2005, the effective date of the similar amendments adopted by the FTC and FCC. Accordingly, under the proposed rule change, effective January 1, 2005, an NASD member seeking to qualify for the safe harbor in Rule 2212 would be required to use a process to prevent telephone solicitations to any telephone number in a version of the national do-not-call registry obtained from the administrator of the registry (i.e., the FTC) no more than thirty-one days prior to the date any call is made.

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 30 days following Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD rules must

with the FTC with respect to, and maximize the consistency of, their respective do-not-call rules. 69 Fed. Reg. 60313.

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. NASD believes that the proposed rule change will increase the protection of investors by enabling investors who do not want to receive telephone solicitations to receive the benefits and protections of the national do-not-call registry sooner.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD 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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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. 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-2004-174 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-2004-174. 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, 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 at the principal office of 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 the File Number SR-NASD-2004-174 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Secretary

⁹ 17 CFR 200.30-3(a)(12).