

payments such as dividends and interest to a foreign payee.<sup>3</sup>

DTC introduced DALI in January 2001 at the request of four DTC participants ("Consortium"). DALI's principal features are communicating payment events and withholding instructions relating to such events, managing payee tax documentation (such as IRS Forms W-8 and W-9), and aggregating information for tax reporting and recordkeeping.

At the Consortium's request, DTC agreed to act as project manager for developing the DALI software system and for operating and maintaining the system as a DTC service that would be available to all DTC participants and their customers at standard DTC fees. The Consortium members agreed to finance the product development costs and expected to be reimbursed for such costs over time from the proceeds of user service fees in excess of these costs. The Consortium also agreed to fund DALI's operating losses during the initial phase of operations. The Consortium expected that the DALI system would be widely used by DTC participants, which would therefore obviate the need for the Consortium to continue to fund operating losses and would enable the Consortium to recoup any amounts previously funded.

Only Consortium members have used DALI, and by mid-2003, only one out of those four members continued using DALI. Given the costs of maintaining DALI, DTC has determined that it will no longer offer this service. Consistent with the agreements between DTC and the Consortium, DTC will transfer the DALI system to the Consortium member that is still using and funding DALI. DTC will operate the system as a facilities manager on behalf of that member for a limited period of time (less than one year) during the transition. This member intends to operate the DALI system in-house for its own customers.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(A) of the Act<sup>4</sup> and the rules and regulations thereunder applicable to DTC because it will enhance DTC's ability to safeguard securities and funds in its custody or control or for which it is responsible by promoting the efficient allocation of DTC resources. This will be done by terminating the operation of a service that is not being utilized by a sufficient number of DTC participants to support

its costs or justify its use of DTC's operational resources.

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

DTC perceives no impact on competition by reason of the proposed rule change. Each of the three Consortium members that used DALI informed DTC that it has developed its own internal system to perform withholding and reporting with respect to DALI's functions and that DTC's discontinuance of DALI will not adversely affect it. DTC will assist the remaining Consortium member in transitioning the DALI system for its own use.

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

DTC has not solicited nor received written comments on the proposed rule change. DTC will inform the Commission of any written comments it receives.

### **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) of the Act<sup>5</sup> and Rule 19b-4(f)(6) thereunder<sup>6</sup> because it effects a change that does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and does not become operative for 30 days after the date of the filing. At any time within 60 days of the filing of such 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 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 5th Street NW., Washington, DC 20549-0069. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No.

SR-DTC-2003-13. This file number should be included on the subject line if e-mail is used. To help us process and review 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 rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at DTC's principal office and on DTC's Web site at <http://www.dtc.org/impNtc/mor/index.html>. All submissions should refer to File No. SR-DTC-2003-13 and should be submitted by December 15, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 03-29297 Filed 11-21-03; 8:45 am]

**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-48788; File No. SR-NASD-2001-85]**

### **Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Affirmative Determination Requirements for Short Sale Orders Received by Members From Non-Member Broker-Dealers**

November 14, 2003.

#### **I. Introduction**

On November 27, 2001, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Regulation, Inc., filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to require that before accepting

<sup>3</sup> See Sections 1441 *et seq.* of the Internal Revenue Code and regulations promulgated thereunder.

<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(A).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 270.19b-4(f)(6).

<sup>7</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.

a short sale order from a broker-dealer that is not an NASD member ("non-member broker-dealer") a member must make an affirmative determination that the member will receive delivery of the security from the non-member broker-dealer or that the member can borrow the security on behalf of the non-member broker-dealer for delivery by settlement date. The proposed rule change was published for comment in the **Federal Register** on January 23, 2002.<sup>3</sup> The Commission received one comment letter on the proposal. On July 18, 2003, the NASD submitted Amendment No. 1 to the proposed rule change. On September 15, 2003, the NASD submitted Amendment No. 2 to the proposed rule change. This order approves the proposed rule change, as amended, and solicits comments from interested persons on Amendment Nos. 1 and 2.

## II. Description of the Proposal

NASD Rule 3370(b)(2)(A) provides that no member or person associated with a member shall accept a short sale order for any customer in any security unless the member or person associated with a member makes an affirmative determination that the member will receive delivery of the security from the customer or that the member can borrow the security on behalf of the customer for delivery by settlement date. For purposes of NASD Rule 3370(b)(2), the term "customer" is defined in NASD Rule 0120(g) and excludes a broker or dealer.

As a result, the requirements of NASD Rule 3370(b)(2)(A) generally do not apply directly to orders received by a member from another broker-dealer (the "originating broker-dealer"). This does not present regulatory concerns where the originating broker-dealer is also an NASD member because, as a member, the originating broker-dealer would have an independent obligation to comply with the requirements under NASD Rule 3370(b)(4)(B) ("Affirmative Determination Requirements") with respect to the order. Non-member broker-dealers, however, are not subject to NASD rules and, therefore, are not independently required to comply with the NASD's Affirmative Determination Requirements. Thus the Affirmative Determination Requirements generally do not apply to short sale orders that originate with a non-member broker-dealer and are subsequently routed to an NASD member.

To address these concerns, the proposed rule change would amend

NASD Rule 3370(b)(2)(A) to require that no member or person associated with a member shall accept a short sale order for any customer, or any non-member broker-dealer in any security unless the member or person associated with a member makes an affirmative determination that the member will receive delivery of the security from the customer or non-member broker-dealer, or that the member can borrow the security on behalf of the customer or non-member broker-dealer for delivery by settlement date. In such instances, members also would be required to comply with the corresponding recordkeeping requirements under NASD Rule 3370(b)(4)(B).

While NASD members generally are required to make affirmative determinations for both customer and proprietary orders, there are limited exceptions for proprietary orders that are bona fide market making, bona fide fully hedged or bona fide fully arbitrated transactions.<sup>4</sup> Under the proposed rule change, if a member can establish and document that a proprietary order it has received from a non-member broker-dealer meets one of these exceptions, it would be in compliance with the proposed amendments to the Affirmative Determination Requirements.

## III. Comments and NASD Response

The Commission received one comment letter from Island ECN, Inc. ("Island"). Island's comment letter makes two basic points. First, it suggests the Commission should not approve the proposal until the issue of the Nasdaq primary market maker ("PMM") standards exemption is addressed. Second, Island argues that the NASD offers no factual basis for the proposal. The NASD believes that no changes to the proposal are necessary in response to Island's letter.

Regarding Island's first point, the NASD's response is that Island confuses the requirements of the bid test, which addresses the price at which a short sale may be made, with the affirmative determination requirement, which prevents abusive short selling and ensures that short sellers satisfy their settlement obligations. According to the NASD, short selling members must comply with both affirmative determinations and bid test requirements. According to the NASD, the current rule applies only to a member's proprietary orders and customer orders, which excludes

another broker or dealer by definition.<sup>5</sup> NASD proposes to close this gap.

Further, NASD has made similar changes NASD Rule 2860 to the option position, exercise and reporting requirements.<sup>6</sup>

NASD's response to Island second point is that NASD has set forth a factual basis for approval of the proposal consistent with section 15A(b)(6) of the Act.<sup>7</sup> According to NASD, hard evidence of violative conduct sought by Island has not been necessary for similar proposed rule changes, and, if required, would undermine the ability of self-regulatory organizations to close gaps in their rules. Moreover, NASD represents that it has observed cases of member firms that have not complied with short sale requirements for orders received from non-member broker-dealers. NASD believes that orders from non-member broker-dealers have the potential for fails to deliver just as short sales by other persons subject to the rule.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2 to the proposed rule change, including whether Amendment Nos. 1 and 2 are 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. 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 No. SR-NASD-2001-85 and should be submitted by December 15, 2003.

## V. Discussion

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

<sup>5</sup> See NASD Rule 0120(g).

<sup>6</sup> Securities Exchange Act Release No. 43718 (December 13, 2000), 65 FR 80969 (December 22, 2000) (approving SR-NASD-2000-36).

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

<sup>3</sup> See Securities Exchange Act Release No. 45257 (January 9, 2002), 67 FR 3249.

<sup>4</sup> NASD Rule 3370(b)(2)(B).

applicable to a national securities association.<sup>8</sup> In particular, the Commission believes that the proposal, as amended, is consistent with the requirements of section 15A(b)(7) of the Act<sup>9</sup> because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 failure to have uniform application of the Affirmative Determination Requirements affects the integrity of the marketplace by potentially increasing fails to deliver and creates regulatory disparity by allowing certain firms to effect short sales outside the purview of the NASD's Affirmative Determination Requirements.

#### VI. Accelerated Approval of Amendment Nos. 1 and 2

The Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the amendments are published for comment in the **Federal Register** pursuant to section 19(b)(2) of the Act.<sup>10</sup> Amendment No. 1 extends NASD members' affirmative determination obligations to orders received from non-member broker-dealers. Amendment No. 2 specifies which firms can claim an exemption from the affirmative determination requirements. These amendments will correct a regulatory disparity that allows certain firms to effect short sales outside the purview of the Affirmative Determination Requirements. The Commission believes that accelerating approval will allow the implementation of this rule without unnecessary delay.

#### VII. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities association, and, in particular, with section 15A(b)(7) of the Act.<sup>11</sup>

<sup>8</sup> In approving the proposed rule change, as amended, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78o-3.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 15 U.S.C. 78o(3).

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-NASD-2001-85) is approved, and that Amendment Nos. 1 and 2 thereto are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 03-29295 Filed 11-21-03; 8:45 am]  
BILLING CODE 8010-01-P

#### SMALL BUSINESS ADMINISTRATION

##### Senior Executive Service; Performance Review Board Members

**AGENCY:** Small Business Administration.

**ACTION:** Notice of members of the FY 2003 Performance Review Board.

**SUMMARY:** Section 4314(c)(4) of Title 5, U.S.C., requires each agency to publish notification of the appointment of individuals who may serve as members of that Agency's Performance Review Boards (PRB). The following have been designated to serve on the FY 2003 Performance Review Boards for the U.S. Small Business Administration:

1. Lisa Goeas, Chief of Staff;
2. Cheryl Mills, Associate Deputy Administrator for Entrepreneurial Development;
3. Lewis D. Andrews, Jr., Associate Deputy Administrator for Management and Administration;
4. Stephen Galvan, Chief Information Officer;
5. Susan Hensley, Associate Administrator for Communications and Public Liaison;
6. Judith Roussel, District Director (Chicago);
7. José Sifontes, District Director (New York);
8. Robert J. Moffitt, Deputy Associate Deputy Administrator for Management and Administration;
9. Monika Edwards Harrison, Chief Human Capital Officer;
10. Loyola R. Trujillo, Assistant Administrator for Equal Employment Opportunity and Civil Rights Compliance;
11. Eric Benderson, Associate General Counsel for Litigation;
12. Calvin Jenkins, Deputy Associate Deputy Administrator for Capital Access;
13. Jennifer Main, Deputy Chief Financial Officer;

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

14. James Rivera, Associate Administrator for Financial Assistance; and,

15. Jerry Williams, Deputy Chief Information Officer.

Dated: November 17, 2003.

**Hector V. Barreto,**  
Administrator.

[FR Doc. 03-29227 Filed 11-21-03; 8:45 am]  
BILLING CODE 8025-01-P

#### DEPARTMENT OF STATE

[Delegation of Authority No. 266-1]

**Delegation of Authority by the Under Secretary for Management for the Administrative Collection, Compromise, Suspension, Termination of Department Collection, Advance Decision, Settlement, and Waiver of Claims of or Against Debtors of the Department of State**

##### Section 1. General Delegation

By virtue of the authority vested in me as Under Secretary of State for Management, including under Delegation of Authority No. 198, dated September 16, 1992, I hereby delegate the duties, functions and responsibilities for the administrative collection, compromise, suspension, termination of Department collection, advance decision, settlement, and waiver of claims of or against debtors of the Department of State pursuant to section 211 of the Legislative Branch Appropriation Act, 1996, Public Law 104-53, 109 Stat. 514(1995); the Office of Management and Budget's Determination with Respect to Transfer of Functions Pursuant to Public Law 104-53 (June 30, 1996); sections 103(d), 105(b), 116, and 204 of the General Accounting Office Act of 1996, Public Law 104-316, 110 Stat. 3816 (1996); the Office of Management and Budget's Determination with Respect to Transfer of Functions Pursuant to Public Law 104-316 (December 17, 1996); and Title 31 of the United States Code Chapter 37 to the Chief Financial Officer. I further delegate such authority to additional officers regarding claims for specified amounts as follows:

- Over \$35,000 but not more than \$50,000: Deputy Chief Financial Officer;
- Up to and including \$35,000: Deputy Assistant Secretary for Global Financial Services; and
- Up to and including \$500: Principal Officer of the post.

##### Section 2. Delegation Revoked

The following delegation of authority is hereby revoked: the June 15, 1999,