

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 Fifth Street, NW., Washington, DC 20549-0609. Comments should be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NASD-2003-199. 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 hard copy 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 be submitted by February 26, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49152; File No. SR-NASD-2003-175]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Repeal Rule 4613A(e)(1) Requiring Same-Priced Quotations on Multiple Markets

January 29, 2004.

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 November 26, 2003, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange

Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 repeal NASD Rule 4613A(e)(1), which requires members that display priced quotations for a Nasdaq security on multiple market centers to display the same-priced quotations on each market center. Below is the text of the proposed rule change. Proposed deletions are in brackets.

* * * * *

4613A. Character of Quotations

(a) through (d) No change.

(e) Other Quotation Obligations

[(1) Members that display priced quotations on a real-time basis for Nasdaq securities in two or more market centers that permit quotation updates on a real-time basis must display the same priced quotations for the security in each market center.]

[(2)] As required by Rule 11Ac1-2(e) under the Exchange Act, a member that uses an ADF terminal or other approved ADF electronic interface shall be obligated to have available in close proximity to the ADF terminal or interface a quotation service that disseminates the bid price and offer price from all markets trading that Nasdaq security.

* * * * *

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

NASD is proposing to repeal NASD Rule 4613A(e)(1), which requires

members that display priced quotations for a Nasdaq security in two or more market centers to display the same priced quotations for that security in each market center. Pursuant to this rule, members that choose to quote in multiple market centers are not permitted to display an inferior quote in any of those market centers. NASD Rule 4613A(e)(1) was proposed as part of the Alternative Display Facility ("ADF") pilot rules³ because NASD believed it important to prevent fragmentation of quotations by a member (which might serve to undermine the transparency of the best quotes in the market), given the increased potential that members might choose to dual quote on several market centers, including ADF. This provision was modeled closely after NASD Rule 2320(g)(2), which applies to over-the-counter ("OTC") securities, such as those securities quoted through the OTC Bulletin Board and the Electronic Pink Sheets.

Since its adoption, NASD has monitored the impact of NASD Rule 4613A(e)(1) and believes that the benefits of the same-priced quotation requirement to the trading in Nasdaq securities have been difficult to quantify. As an initial matter, NASD believes that the Commission's vendor display rule (Rule 11Ac1-2 under the Act) makes NASD Rule 4613A(e)(1) less critical to preserving transparency in the market. NASD also believes that by generally requiring that vendors provide a consolidated display of quotation information for Nasdaq securities from all reporting market centers, the vendor display rule ensures that quotations from each market center are visible, thereby facilitating transparency in the market and best execution. However, since a similar vendor display provision does not apply to the OTC market, NASD believes that it is more important to require that members display the same priced quotation in multiple markets to preserve transparency in that marketplace.

Further, NASD believes that NASD Rule 4613A(e)(1) has resulted in problems given recent market structure developments. For example, a member now may have several completely distinct business units, such as a market making unit and an electronic communications network ("ECN"), which are used by different types of clients and, therefore, represent separate

³ Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002). Subsequent to the initial approval of the ADF rules, the Commission approved an extension of the pilot until January 26, 2004. Securities Exchange Act Release No. 47633 (April 10, 2003), 68 FR 19043 (April 17, 2003).

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

pools of liquidity. A member may choose to display quotations relating to its market-making unit on Nasdaq and its ECN on ADF. Under such circumstances, NASD believes that compliance with NASD Rule 4613A(e)(1) would, in effect, require the member to consolidate these distinct business units for purposes of displaying quotations on each market, which would be contrary to the business model of the firm since these quotes represent separate liquidity pools. As an alternative, the member could establish separate broker/dealers for each business unit, which NASD believes is overly burdensome for members given the marginal benefits associated with NASD Rule 4613A(e)(1).

For the reasons discussed above, the proposed rule change would repeal NASD Rule 4613A(e)(1). However, NASD represents that it will continue, as it currently does today, to monitor and surveil for any potentially collusive or manipulative conduct relating to quotation activity on markets under its regulatory authority.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,⁴ which requires, among other things, that NASD's 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 accomplishes these ends. In light of the Commission's vendor display rule, NASD believes NASD Rule 4316A(e)(1) does not serve any additional beneficial purposes and may, in fact, interfere with competition and certain member's business models.

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.

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 NASD 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. In particular, the Commission solicits comment on (i) whether the proposed rule change will facilitate multiple quotations that erode SEC Rule 11Ac1-1 and (ii) whether the proposed rule change will facilitate locking or crossing the quotes of other market centers. 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-2003-175. 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 hard copy 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 NASD.

All submissions should refer to File No. SR-NASD-2003-175 and should be submitted by February 26, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49154; File No. SR-NYSE-2003-43]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. and Order Granting Accelerated Approval of the Proposed Rule Change To Establish a Pilot Program To Amend the Minimum Numerical Standards (Sections 102.01C, 103.01B, 802.01B, and 802.01C of the Listed Company Manual)

January 29, 2004.

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 December 22, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange.³ On January 19, 2004, the NYSE submitted Amendment No. 1 to the proposed rule change.⁴ On January 23, 2004, the NYSE submitted Amendment No. 2 to the proposed rule change.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change on a six-month pilot basis.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ With the permission of NYSE, the Commission has made typographical, non-substantive corrections to the text of the proposed rule change. See Telephone conversation between Annemarie Tierney, Assistant General Counsel, NYSE, and Susie Cho, Special Counsel, Division of Market Regulation ("Division"), Commission on January 21, 2004.

⁴ See Letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated January 16, 2004 ("Amendment No. 1"). Amendment No. 1 replaced the original proposed rule change in its entirety.

⁵ See Letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated January 22, 2004 ("Amendment No. 2"). Amendment No. 2

⁴ 15 U.S.C. 78o-3(b)(6).

⁵ 17 CFR 200.30-3(a)(12).