

system, and protects investors and the public interest.

The Commission believes that expanding the Nasdaq Prime data feed to cover all price levels, rather than just the top five price levels, may enhance the transparency of the Nasdaq market. The Commission notes that the fees charged by Nasdaq for the data feeds will not be changed. Therefore, distributors and subscribers would receive more data for the same price. Further, distributors that would like to distribute only the aggregate data (*i.e.*, the aggregate size of attributable and non-attributable quotes and orders at five price levels), formerly the ADAP feed, may continue to do so by using the aggregate data from the Nasdaq TotalView Data Feed for the same distributor fee Nasdaq charges today.¹⁰

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-NASD-2003-162), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04-1464 Filed 1-22-04; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Release No. 34-49075, File No. SR-NASD-2003-181)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NASD Rule 4613A(c) To Clarify That NASD May Suspend Quotations in NASD's Alternative Display Facility Displayed by an Electronic Communication Network That Are No Longer Reasonably Related to the Prevailing Market

January 14, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder² notice is hereby given that on December 4, 2003, 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. NASD has designated this proposed rule change as concerned solely with the administration of the self-regulatory organization under section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(3) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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 proposes to amend NASD Rule 4613A(c) to clarify that NASD may suspend quotations in NASD's Alternative Display Facility ("ADF") displayed by any market participant, including an Electronic Communication Network ("ECN"), that are no longer reasonably related to the prevailing market. The proposed rule change would apply during the time that the NASD ADF operates on a pilot basis. The Commission previously approved the ADF as a nine-month pilot to quote and trade Nasdaq-listed securities only.⁵ The Commission subsequently approved an extension of the pilot until January 26, 2004.⁶

The text of the proposed rule appears below. Proposed new text is in italics. Deleted text is in brackets.

* * * * *

4613A. Character of Quotations

(a) through (b), No change.

(c) Quotations Reasonably Related to the Market

An NASD Market Participant [Registered Reporting ADF Market Maker] shall enter and maintain quotations that are reasonably related to the prevailing market. In the event it appears that an *NASD Market Participant's* [Registered Reporting ADF Market Maker's] quotations are no longer reasonably related to the prevailing market, NASD may require the [m]NASD Market [maker] *Participant* to re-enter its quotations. If an *NASD Market Participant* [Registered Reporting ADF Market Maker] whose quotations are no longer reasonably related to the prevailing market fails to re-enter its quotations, NASD may suspend the *NASD Market*

Participant's [market maker's] quotations in one or all securities. *For the purposes of this paragraph (c), "NASD Market Participant" shall have the meaning as set forth in Rule 4300A(d)(4).*

(1) In the event that an *NASD Market Participant's* [Registered Reporting ADF Market Maker's] ability to enter or update quotations is impaired, the *NASD Market Participant* [Registered Reporting ADF Market Maker] shall immediately contact NASD Alternative Display Facility operations to request the withdrawal of its quotations.

(2) In the event that an *NASD Market Participant's* [Registered Reporting ADF Market Maker's] ability to enter or update quotations is impaired and the *NASD Market Participant* [Registered Reporting ADF Market Maker] elects to continue to participate through NASD's Alternative Display Facility, the *NASD Market Participant* [Registered Reporting ADF Market Maker] shall execute an offer to buy or sell received from another NASD member at its quotations as disseminated through NASD's Alternative Display Facility.

(d) through (c) No change.

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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

Background

On July 24, 2002, the Commission approved SR-NASD-2002-97, which authorizes NASD to operate the ADF on a pilot basis for nine months, pending the anticipated approval of SR-NASD-2001-90, which proposes to operate the ADF on a permanent basis.⁷ On April 10, 2003, the Commission approved SR-NASD-2003-53, authorizing extension of the ADF pilot period until January 26, 2004.⁸ As described in detail in SR-

¹⁰ When the TotalView Data Feed is expanded to cover all price levels, a distributor that would like to distribute only the aggregate data would distribute the aggregate size of attributable and non-attributable quotes and orders at all price levels.

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(3).

⁵ See Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002) (SR-NASD-2002-97).

⁶ See Securities Exchange Act Release No. 47663 (April 10, 2003), 68 FR 19043 (April 17, 2003) (SR-NASD-2003-67).

⁷ See Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002).

⁸ See *supra* note 6.

NASD-2001-90, the ADF is quotation collection, trade comparison, and trade reporting facility developed by NASD in accordance with the Commission's approval of Nasdaq's SuperMontage⁹ and in conjunction with Nasdaq's application to register as a national securities exchange.¹⁰

For the duration of the pilot period, the ADF will provide NASD market participants¹¹ (e.g., market makers and ECNs) the ability to post quotations in Nasdaq securities and will provide all members that participate in the ADF the ability to view quotations and report transactions in Nasdaq securities to the exclusive Securities Information Processor ("SIP") for Nasdaq-listed securities for consolidation and dissemination of data to vendors and ADF market participants. The ADF also will provide for trade comparison through the Trade Reporting and Comparison Service ("TRACS"). The ADF further will provide for real-time data delivery to NASD for regulatory purposes, including enforcement of the firm quote rule and other related rules. NASD anticipates that the ADF will operate on a pilot basis until the date the Commission should approve SR-NASD-2001-90, providing for the operation of the ADF on a permanent basis and an expansion of ADF-eligible securities to include all exchange-listed securities.

Quotations Reasonably Related to the Market

NASD Rule 4613A(c) permits NASD to suspend an ADF market maker's quotations in one or all securities when those quotations are no longer reasonably related to the prevailing market and where that market maker fails to remedy the disparity by re-entering its quotations. The rule also requires that ADF market makers contact ADF Market Operations and request the withdrawal of their quotes if their ability to enter or update quotes is impaired. In the event that an ADF market maker elects to continue to participate in the ADF under such circumstances, the market maker must execute any orders received against the displayed quote. In accordance with ADF market participant subscriber agreements, as well as NASD's plenary obligations to operate a fair and efficient over-the-counter market, NASD states that it also has maintained similar

authority with respect to ECN market participants. NASD represents that the proposed rule change only makes express its existing interpretation of NASD Rule 4613A(c), that it believes is consistent with the terms and conditions of ADF market participant subscriber agreements, that ECN quotations are also subject to these requirements in such circumstances.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,¹² which requires, among other things, that NASD rules 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 foster greater confidence in the markets by making clear that NASD can take appropriate remedial action with regard to quotations by any ADF market participant that may compromise the integrity of the ADF.

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

NASD does not believe that the proposed rule change will impose 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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)¹³ of the Act and subparagraph (f)(1) of Rule 19b-4¹⁴ thereunder, in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of this filing, the Commission may summarily abrogate much 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 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comments letters should refer to File No. SR-NASD-2003-181. 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 hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendment, 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 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-2003-181 and should be submitted by February 13, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04-1465 Filed 1-22-04; 8:45 am]

BILLING CODE 8010-01-M

⁹ See Securities Exchange Act Release NO. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (SR-NASD-99-53).

¹⁰ See Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001) (File No. 10-131).

¹¹ See NASD Rule 4300(A)(d)(4).

¹² 15 U.S.C. 78o-3(b)(6).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(1).

¹⁵ 17 CFR 200.30-3(a)(12).