

2. Statutory Basis

NASD Regulation believes that the proposal is consistent with the provisions of Section 15A(b)(6) of the Act,²⁷ which requires, among other things, that the Association'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 Regulation believes that the proposed rule change is consistent with Section 15A(b)(7) of the Act,²⁸ in that it is intended to safeguard the interests of investors while establishing fair and reasonable rules for its members and persons associated with its members. NASD Regulation also believes that the proposed rule change is consistent with Section 15A(b)(8) of the Act,²⁹ in that it furthers the statutory goals of providing a fair procedure for disciplining members and associated persons.

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

NASD Regulation 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 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. 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 number SR-NASD-00-39 and should be submitted by October 20, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.³⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43319; File No. SR-NASD-00-20]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend the Three Quote Rule for Transactions in Non-Nasdaq Securities

September 21, 2000.

I. Introduction

On April 13, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, NASD Regulation, Inc. ("NASD Regulation"), 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-4² thereunder, a proposed rule change that amends the Three Quote Rule for transactions in non-Nasdaq securities and its corresponding recordkeeping provision. The proposal was published for comment in the **Federal Register** on June 25, 2000.³ The Commission

received no comments on the proposal. This order approves NASD Regulations' proposed rule change.

II. Description of the Proposal

NASD Regulation has proposed three amendments to the NASD's rules.

First NASD Regulation has proposed to amend NASD Rule 2320(g)—commonly known as the "Three Quote Rule"—to relieve members of the current obligation to obtain three quotes for a transaction in a non-Nasdaq security⁴ when there are two or more priced quotations for that security displayed in an inter-dealer quotation system (such as the OTC Bulletin Board ("OTCBB") or the Electronic Quotation Service operated by Pink Sheets LLC ("Pink Sheets")) that permits quotation updates on a real-time basis.

Currently, the rule requires members that execute a transaction in a non-Nasdaq security on behalf of a customer to contact and obtain quotations from three dealers (or all dealers if three or less) to determine the best inter-dealer market for that security.⁵ The intent of the Three Quote Rule is to help ensure that members fulfill their responsibilities to customers to provide best execution for transactions in non-Nasdaq security, particularly illiquid securities with non-transparent prices.

NASD Regulation now believes that the existing Three Quote Rule often hinders, rather than furthers, investor protection by causing significant delays in obtaining executions of customer orders. Therefore, NASD Regulation is proposing that Rule 2320(g) be amended to require that members obtain quotations from three dealers (or all dealers if three or less) only when there are fewer than two priced quotations displayed in an inter-dealer quotation system that permits quotation updates on a real-time basis (such as the OTCBB or the Pink Sheets).⁶

Second, NASD Regulation has proposed to amend one of its recordkeeping requirements for members to correspond with the proposed amendment to the Three Quote Rule. Currently, NASD Rule

⁴ A non-Nasdaq security is any equity security that is neither included in the Nasdaq Stock Market nor traded on a national securities exchange. See NASD Rule 6710(c).

⁵ Currently, if three firm quotations are displayed, a broker-dealer is not required to call the three market makers to verify the firm quotations that are displayed on the screen. A broker-dealer need note on the order ticket only the identity of the broker-dealers and the firm quotations displayed.

⁶ The proposed rule change defines the term *inter-dealer quotation system* as any system of general circulation to brokers or dealers that regularly disseminates quotations of identified brokers or dealers.

²⁷ 15 U.S.C. 78o-3(b)(6).

²⁸ 15 U.S.C. 78o-3(b)(7).

²⁹ 15 U.S.C. 78o-3(b)(8).

³⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 42958 (June 20, 2000), 65 FR 39457.

3110(b)(2) requires that members, for each transaction in a non-Nasdaq security, indicate on the order ticket the name of each dealer contacted and each quotation received with respect to that security, in order to determine the best inter-dealer market. NASD Regulation has proposed to eliminate this obligation when two or more priced quotations for that security are displayed in an inter-dealer quotation system if: (1) the system permits quotation updates on a real-time basis, and (ii) NASD Regulation has access to the quotation data.⁷

Third, NASD Regulation has proposed to add a new provision to Rule 2320(g) that will require members that display quotations for a given non-Nasdaq security in two or more quotation mediums that permit quotation updates on a real-time basis to provide the same priced quotation in each medium.⁸

III. Discussion

A. General

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the regulations thereunder applicable to the NASD.⁹ In particular, the Commission believes that the proposal is consistent with Sections 15A(b)(6) and 15A(b)(9) of the Act.¹⁰ Section 15A(b)(6) requires, among other things, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; 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. Section 15A(b)(9) requires that the rules of the association not impose any burden on competition

not necessary or appropriate in furtherance of the purposes of the Act.

B. Amendment to Three Quote Rule and Corresponding Recordkeeping Provision

The Commission approved the NASD proposal that instituted the Three Quote Rule in 1988.¹¹ The Three Quote Rule was an amendment to the NASD's interpretation relating to best execution of retail transactions in non-Nasdaq securities. The Rule's purpose is to assure that NASD members fulfill their duty to provide customers with best execution for transactions in non-Nasdaq securities, especially illiquid securities with non-transparent prices.

Currently, the Three Quote Rule requires members to obtain quotes from three dealers before executing a transaction in a non-Nasdaq security on behalf of a customer. Under NASD Rule 3110(b)(2), the companion recordkeeping rule, members are required to indicate on the order ticket for each transaction in a non-Nasdaq security the names of the dealers contacted and the prices of the quotations. NASD Regulation's current proposal would exempt from the Three Quote Rule transactions involving a non-Nasdaq security when there are two or more priced quotations for that security displayed in an inter-dealer quotation system that permits quotation updates on a real-time basis. A corresponding amendment to NASD Rule 3110(b)(2) would eliminate the requirement to indicate on the order ticket for a transaction in a non-Nasdaq security the dealers contacted and quotations received, provided there are two or more priced quotations for that security displayed in an inter-dealer quotation system and NASD Regulation has access to the historical quotation information.¹²

In light of the significant technological advances that have occurred in the markets for non-Nasdaq securities since adoption of the Three Quote Rule, the Commission believes it is reasonable and consistent with the Act to limit the Rule's applicability to those situations when fewer than two priced quotes for a non-Nasdaq security are posted in an inter-dealer quotation medium. The Commission also finds that, in light of the proposed amendment to the Three Quote Rule, the corresponding amendment to the recordkeeping provisions of NASD Rule 3110(b)(2) is reasonable and consistent with the purposes of the Act. The Commission notes that, whether or not

a transaction in a non-Nasdaq security is subject to the Three Quote Rule, the member executing the transaction must satisfy its duty of best execution.

C. Requirement to Post Same Quotation in Different Mediums

Currently, an NASD member may display different priced quotations for the same non-Nasdaq security in different quotation mediums. The Commission believes that this practice can be confusing to market participants and, in particular, to public investors. Requiring that members display consistent priced quotations in multiple quotation mediums will enhance the ability of market participants to ascertain the best inter-dealer market for a non-Nasdaq security. The Commission finds that the proposed amendment implementing this requirement is consistent with the purposes of the Act.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-NASD-00-20) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43318; File No. SR-NASD-00-54]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. on Use of the .T Modifier for Extended Hours Trades in Listed Securities

September 21, 2000.

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 September 1, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary the Nasdaq Stock Market, Inc. ("Nasdaq"), 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

⁷ At present, NASD Regulation has such data with respect to the OTCBB but does not have access to historical quotation data with respect to the Pink Sheets. NASD Regulation recently submitted to the Commission a proposed rule change (SR-NASD-00-42) that would require NASD members that publish quotations in the Pink Sheets (or any similar automated quotation system) to record and maintain priced quotations and unpriced indications of interest data and to report such quotation data to NASD Regulation upon request.

⁸ The proposed rule change defines the term *quotation medium* as any inter-dealer quotation system or any publication or electronic communications network or other device that is used by brokers or dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.

⁹ In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78o-3(b)(6) and (b)(9).

¹¹ See Securities Exchange Act Release No. 25637 (May 2, 1988), 53 FR 16488 (May 9, 1988).

¹² See *supra* note 7.

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.