

bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 03-31111 Filed 12-16-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[File No. 1-13964]

### Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (The Southern Banc Company, Inc., Common Stock, \$.01 Par Value)

December 11, 2003.

The Southern Banc Company, Inc., a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 12d2-2(d) thereunder,<sup>2</sup> to withdraw its Common Stock, \$.01 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Board of Directors of the Issuer unanimously approved a resolution on November 12, 2003 to withdraw the Issuer's Security from listing on the Amex. The Board of Directors of the Issuer states that the reasons it is taking such action are as follows: (i) The Issuer has a limited number of stockholders of record; (ii) the costs associated with maintaining the Issuer's status as an Amex-listed company; (iii) the limited volume of trading of the shares; and (iv) no analysts cover the Issuer and the shares.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's

voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under section 12(b) of the Act<sup>3</sup> and shall not affect its obligation to be registered under section 12(g) of the Act.<sup>4</sup>

Any interested person may, on or before January 5, 2004, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 03-31110 Filed 12-16-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48902; File No. SR-NASD-2003-162]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. Relating to Prime and ADAP Data Feeds in NASD Rule 7010(q)

December 10, 2003.

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> notice is hereby given that on October 29, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its 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 have been prepared by Nasdaq. On December 5, 2003, Nasdaq filed Amendment No. 1 to the proposed rule

change.<sup>3</sup> The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

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

Nasdaq filed with the Commission a proposed rule change to NASD Rule 7010(q). The proposed rule change would rename the Nasdaq Prime data feed as the TotalView Data Feed, expand it to include quotes and orders at all price levels associated with an individual issue traded on Nasdaq, and discontinue the Nasdaq Aggregated Depth at Price ("ADAP") data feed.

Nasdaq proposes to expand the TotalView Data Feed on or after April 1, 2004 and to eliminate the ADAP data feed on or after February 16, 2004; in each case, Nasdaq will issue a vendor alert announcing the actual date of the change at least three calendar days before it is implemented.<sup>4</sup> Nasdaq previously issued a vendor alert in August 2004 announcing its intention to seek these rule changes.<sup>5</sup>

Proposed new language is *italicized*; proposed deletions are in brackets.

\* \* \* \* \*

### Rule 7010. Charges for Services and Equipment

(a)-(p) No change.

(q) Nasdaq Data Entitlement Packages

This subsection (q) sets out the charges for the data entitlement packages collectively known as ViewSuite. Subsections (q)(1) and (q)(2) describe the data entitlement packages and set out the regular charges for each. Subsection (q)(3) describes the Enterprise License Program, an optional pilot program that modifies the regular charges for participants as set out therein. Subsection (q)(4) describes the *Non-Display Enterprise License Pilot*. Subsection (q)(5) describes the ViewSuite entitlement, a second pilot

<sup>3</sup> See Letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 4, 2003. In Amendment No. 1, Nasdaq replaced in its entirety the original rule filing.

<sup>4</sup> Nasdaq has represented that even if it eliminates the ADAP data feed prior to the expansion of the TotalView Data Feed, distributors that wish to continue to distribute only the aggregate data (*i.e.*, the aggregate size of attributable and non-attributable quotes and orders at five price levels) may do so by using the aggregate data available from the current Nasdaq Prime data feed. Telephone conversation among Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, Thomas Davin, Senior Vice President, Nasdaq, and David Hsu, Attorney, Division, Commission, on December 10, 2003.

<sup>5</sup> See Nasdaq Vendor Alert 2003-51, which is available on [www.nasdaqtrader.com](http://www.nasdaqtrader.com).

<sup>5</sup> 17 CFR 200.30-3(a)(1).

<sup>1</sup> 15 U.S.C. 78l(d).

<sup>2</sup> 17 CFR 240.12d2-2(d).

<sup>3</sup> 15 U.S.C. 78l(b).

<sup>4</sup> 15 U.S.C. 78l(g).

<sup>5</sup> 17 CFR 200.30-3(a)(1).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

program that suspends the regular charges set out in (q)(1) and (q)(2) during its operation. Thus, the monthly charges set out in (q)(1) and (q)(2) below are not in effect during the length of the pilot program set out in (q)(4)(5). *Subsection (q)(6) sets forth definitions and subsection (q)(7) addresses revenue sharing.*

(1) DepthView and PowerView

(A) The DepthView entitlement package contains all [information disseminated through the Nasdaq Aggregated Depth at Price (ADAP) data feed: the five best price levels in Nasdaq on both the bid and offer side of the market. Each price level is dynamically updated and displays the aggregate size of "displayed" trading interest, attributable and non-attributable, at each price level.] *aggregate data carried on the TotalView Data Feed, as defined in (q)(2).* The Nasdaq PowerView entitlement package consists of DepthView and the Nasdaq Quotation Dissemination Service (NQDS) feed.

(i) Except as provided in (q)(1)(A)(ii) [below], for DepthView, there [will] *shall* be a \$50.00 monthly charge [to be paid] for each controlled device.<sup>[1]</sup>

(ii) [t]The charge to [be paid by] a non-professional<sup>[2]</sup> subscriber of *DepthView* for each controlled device shall be \$25.00 per month.

(B)(i) Except as provided in [paragraph] (q)(1)(B)(ii) [below], for PowerView, there [will] *shall* be a \$75.00 monthly charge [to be paid] for each controlled device.<sup>[3]</sup>

(ii) [t]The charge to [be paid by] a non-professional subscriber<sup>[4]</sup> of *PowerView* for each controlled device [will] *shall* be \$29.00 per month<sup>[5]</sup>.

(C) Distributors<sup>[6]</sup> of [ADAP data] *aggregate data carried on the TotalView Data Feed* [(either through DepthView or PowerView)] shall pay a charge of \$1,000.00 per month.

(D) Thirty-Day Free-Trial Offer. Nasdaq [will] *shall* offer all new individual subscribers and potential new individual subscribers a 30-day waiver of the fees for any ViewSuite service (DepthView or PowerView) that such subscriber or potential subscriber chooses to try for the 30-day period. This waiver [does] *shall* not include the *incremental* fees assessed for the NQDS-only service<sup>[7]</sup>, which are \$30.00 for professional users and \$9.00 for non-professional users per month. This fee waiver period [will] *shall* be applied on a rolling basis, determined by the date on which a new individual subscriber or potential individual subscriber is first entitled by a distributor to receive access to DepthView or PowerView. A distributor may only provide this waiver to a specific individual subscriber once.

(i) DepthView. For the period of the offer, the DepthView fee of \$50 per professional user and \$25 per non-professional user *per month* [will] *shall* be waived.

(ii) PowerView. For the period of the offer, the PowerView fee of \$45 per professional user and \$20 per non-professional user *per month* [will] *shall* be waived.

(2) TotalView

The *TotalView Data Feed* [NQDS Prime data feed (hereinafter referred to as "Prime")] consists of the individual Nasdaq SuperMontage participant orders and quotes *and the aggregate size of such orders and quotes at each price level* [that make up the top five price levels] in [the] SuperMontage [System]. The TotalView entitlement package includes the information disseminated through the [Prime data feed] *TotalView Data Feed* in addition to the data contained in the PowerView entitlement package.

(A) Distributors of TotalView data shall pay a charge of \$7,500 per month.

(B) For TotalView, there [will] *shall* be a charge of \$150 per month per controlled device.<sup>[8]</sup>

(C) 30-Day Free-Trial Offer. Nasdaq [will] *shall* offer all new individual subscribers and potential new individual subscribers a 30-day waiver of the fees for TotalView. This waiver [does] *shall* not include the *incremental* fees assessed for the NQDS-only service<sup>[9]</sup>, which are \$30.00 for professional users and \$9.00 for non-professional users per month. This fee waiver period [will] *shall* be applied on a rolling basis, determined by the date on which a new individual subscriber or potential individual subscriber is first entitled by a distributor to receive access to TotalView. A distributor may only provide this waiver to a specific individual subscriber once.

[(i)] For the period of the offer, the TotalView fee of \$120 per professional user and \$141 per non-professional user *per month* shall [will] be waived.

(3) Enterprise License Pilot[.]

For a nine-month period commencing on April 1, 2003, each distributor of DepthView, PowerView, and/or TotalView may purchase one or more enterprise licenses that entitle it to distribute the licensed product to its entitled Level 1 or NQDS subscribers<sup>[3]</sup> for a fixed monthly fee based on the formulae set forth in [subparagraphs] (q)(3)(A)–(F) [below]. *The Enterprise License Pilot shall not apply to the Level 1 and NQDS data services. All distributors continue to be obligated to report and pay for all entitled Level 1*

*and NQDS subscribers throughout the pilot period.* A distributor must purchase an enterprise license(s) within two months following the beginning of this program and must agree by contract to pay the fixed monthly fee for the remaining length of the nine-month period. The distributor must also pay applicable distributor fees set forth in [subparagraph] (q)(1)(C) or (q)(2)(A) [above].

(A) DepthView Non-Professional Enterprise License:

(i) The DepthView Non-Professional Enterprise License permits a distributor to provide DepthView to all of its entitled Level 1 non-professional subscribers.

(ii) The formula for the DepthView Non-Professional Enterprise License fee is  $0.25 \times \text{number of entitled Level 1 non-professional subscribers in the Predicate Month}^{[4]} \times \$25$ .

(B) DepthView Professional Enterprise License:

(i) The DepthView Professional Enterprise License permits a distributor to provide DepthView to all of its entitled Level 1 professional subscribers.

(ii) The formula for the DepthView Professional Enterprise License fee is  $0.25 \times \text{number of Level 1 professional subscribers in the Predicate Month} \times \$50$ .

(C) PowerView Non-Professional Enterprise License:

(i) The PowerView Non-Professional Enterprise License permits a distributor to provide PowerView to all of its entitled NQDS non-professional subscribers.

(ii) The formula for the PowerView Non-Professional Enterprise License fee is  $0.35 \times \text{number of NQDS non-professional subscribers in the Predicate Month} \times \$20$ .

(D) PowerView Professional Enterprise License:

(i) The PowerView Professional Enterprise License permits a distributor to provide PowerView to all of its entitled NQDS professional subscribers.

(ii) The formula for the PowerView Professional Enterprise License fee is  $0.35 \times \text{number of NQDS professional subscribers in the Predicate Month} \times \$45$ .

(E) TotalView Non-Professional Enterprise License:

(i) The TotalView Non-Professional Enterprise License permits a distributor to provide TotalView to all of its entitled NQDS non-professional subscribers.

(ii) The formula for the TotalView Non-Professional Enterprise License fee is  $0.25 \times \text{number of NQDS non-}$

professional subscribers in the Predicate Month  $\times$  \$141.

(F) TotalView Professional Enterprise License:

(i) The TotalView Professional Enterprise License permits a distributor to provide TotalView to all of its entitled NQDS professional subscribers.

(ii) The formula for the TotalView Professional Enterprise License fee is  $0.25 \times$  number of NQDS professional subscribers in the Predicate Month  $\times$  \$120.

(4) Non-Display Enterprise License Pilot[.]

In addition or as an alternative to the Enterprise License Pilot, for a nine-month period commencing on April 1, 2003, each distributor of DepthView, PowerView, and/or TotalView may purchase one or more non-display licenses that entitle it to provide non-display benefits of the product to users of controlled devices who do not display the data for an additional fee calculated based on the formulae set forth in [subparagraphs] (q)(4)(A)–(C). [below.<sup>5</sup>] *The Non-Display Enterprise License Pilot shall not apply to the Level 1 and NQDS data services. All distributors continue to be obligated to report and pay for all entitled Level 1 and NQDS subscribers throughout the pilot period.* A distributor must purchase a non-display license(s) within two months following the beginning of this program and must agree by contract to pay the fixed monthly fee for the remaining length of the period. The distributor must also pay applicable distributor fees set forth in [subparagraph] (q)(1)(C) or (q)(2)(A) [above].

(A) DepthView Non-Display License. A distributor may provide non-display benefits of DepthView to users of controlled devices who do not display the data for an additional fee calculated as  $0.25 \times$  the population of non-display controlled devices in March 2003  $\times$  \$50 for professional users or \$25 for non-professional users.

(B) PowerView Non-Display License. A distributor may provide non-display benefits of PowerView to users of controlled devices who do not display the data for an additional fee calculated as  $0.35 \times$  the population of non-display controlled devices in March 2003  $\times$  \$45 for professional users or \$20 for non-professional users.

(C) TotalView Non-Display License. A distributor may provide non-display benefits of TotalView to users of controlled devices who do not display the data for an additional fee calculated as  $0.25 \times$  the population of non-display controlled devices in March 2003  $\times$

\$120 for professional users or \$141 for non-professional users.

[(4)] (5) *TotalView Entitlement Pilot*

For a one-year pilot period commencing on October 1, 2003, the DepthView, PowerView and TotalView entitlements described above in (q) (1) and (q)(2) [of this subsection (q)] shall be offered as a single entitlement, “the [ViewSuite entitlement] *TotalView entitlement*,” and not offered separately. The *TotalView entitlement* [ViewSuite entitlement] shall allow a subscriber to see all of the data in DepthView, PowerView and TotalView including [the ADAP data feed (aggregated depth at the top five price levels),] the NQDS feed[, and the *TotalView Data Feed* [Prime (aggregated quotes of all participants in the top five price levels)].

(A)(i) Except as provided in (q)(5)[(4)](A)(ii) [below], for the [ViewSuite] *TotalView entitlement* there shall be a \$70 monthly charge for each controlled device[, as defined in subsection (q)(1)(A)(i) above].

(ii) A non-professional subscriber[, as defined in subsection (q)(1)(A)(ii) above,] shall pay \$14 per month for each controlled device.

(B) The pilot [ViewSuite] *TotalView entitlement* shall not affect the distributor charges [for ADAP data or Prime data] set out in [subsections] (q)(1)(C) and (q)(2)(A) respectively. Those distributors who are presently receiving only aggregate data may at their option continue to receive that feed at the [ADAP] distributor charge set out in [subsection] (q)(1)(C) [above].

#### (6) Definitions

(A) A “controlled device” is any device that a distributor of the Nasdaq data entitlement package(s) permits to: (i) Access the information in the Nasdaq data entitlement package(s); or (ii) communicate with the distributor so as to cause the distributor to access the information in the Nasdaq data entitlement package(s). If a controlled device is part of an electronic network between computers used for investment, trading or order routing activities, the burden shall be on the distributor to demonstrate that the particular controlled device should not have to pay for an entitlement. For example, in some display systems the distributor gives the end user a choice to see the data or not; a user that chooses not to see it would not be charged. Similarly, in a non-display system, users of controlled devices may have a choice of basic or advanced computerized trading or order routing services, where only the advanced version uses the information.

*Customers of the basic service then would be excluded from the entitlement requirement.*

(B) A “distributor” of a Nasdaq data feed is any firm that receives a Nasdaq data feed directly from Nasdaq or indirectly through another vendor and then distributes it either internally or externally. All distributors shall execute a Nasdaq distributor agreement. Nasdaq itself is a vendor of its data feed(s) and has executed a Nasdaq distributor agreement and pays the distributor charge.

(C) A “non-professional” is a natural person who is neither: (i) registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an “investment advisor” as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor (iii) employed by a bank or other organization exempt from registration under federal or state securities law to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

(D) “Predicate Month” shall mean December 2002 or, if a distributor reported no Level 1 or NQDS subscribers in December 2002, the most recent month after December 2002 in which the distributor did report Level 1 or NQDS subscribers.

#### (7) Revenue Sharing

So long as NQDS is subject to the Nasdaq Unlisted Trading Privileges (UTP) Plan, the revenues from TotalView and PowerView that are directly attributable to the sale of NQDS under the currently approved pricing for NQDS shall be shared pursuant to the UTP Plan.

Text of Footnotes to Subsections (q)(1) and (q)(2):

[1. A controlled device is any device that a distributor of the Nasdaq Data Entitlement Package(s) permits to: (a) Access the information in the Nasdaq Data Entitlement Package(s); (b) communicate with the distributor so as to cause the distributor to access the information in the Nasdaq Data Entitlement Package(s). If a controlled device is part of an electronic network between computers used for investment, trading or order routing activities, the burden will be on the distributor to demonstrate that the particular controlled device should not have to

pay for an entitlement. For example, in some display systems the distributor gives the end user a choice to see the data or not—a user that chooses not to see it would not be charged. Similarly, in a non-display system, users of controlled devices may have a choice of basic or advanced computerized trading or order routing services, where only the advanced version uses the information. Customers of the basic service would be excluded from the entitlement requirement.

2. A “non-professional” is a natural person who is neither: (a) Registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (b) engaged as an “investment advisor” as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor (c) employed by a bank or other organization exempt from registration under federal or state securities law to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

3. So long as NQDS is subject to the Nasdaq Unlisted Trading Privileges (UTP) Plan, the revenues garnered from use of PowerView that are directly attributable to the sale of NQDS under the currently approved pricing for NQDS will be shared pursuant to the UTP Plan.

4. See footnote 2 (definition of non-professional).

5. See footnote 3 (sharing of revenue pursuant to the UTP Plan).

6. A distributor of a Nasdaq data feed is any firm that receives a Nasdaq data feed directly from Nasdaq or indirectly through another vendor and then distributes it either internally or externally. All distributors must execute a Nasdaq distributor agreement. Nasdaq itself is a vendor of its data feed(s) and will execute a Nasdaq distributor agreement and pay the distributor charge.

7. The NQDS-only fees (incremental to the Level 1 charges) are \$30 for professional users and \$9 for non-professional users.

8. So long as NQDS is subject to the Nasdaq UTP plan, the revenues from TotalView that are directly attributable to the sale of NQDS under the currently approved pricing for NQDS will be shared pursuant to the UTP Plan.

9. The NQDS-only fees (incremental to the Level 1 charges) are \$30 for

professional users and \$9 for non-professional users.]

*Text of Footnotes to Subsection (q)(3):*

[3. The Enterprise License Pilot does not apply to the Level 1 and NQDS data services. All distributors continue to be obligated to report and pay for all entitled Level 1 and NQDS subscribers throughout the pilot period.

4. “Predicate Month” shall mean December of 2002 or, if a distributor reported no Level 1 or NQDS subscribers in December of 2002, the most recent month after December of 2002 in which the distributor did report Level 1 or NQDS subscribers.

5. The Non-Display License Pilot does not apply to the Level 1 and NQDS data services. All distributors continue to be obligated to report and pay for all entitled Level 1 and NQDS subscribers throughout the pilot period.]

\* \* \* \* \*

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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**

Currently, Nasdaq offers two data feeds to distributors to support the proprietary ViewSuite products that are offered to professional and non-professional subscribers. The Aggregated Depth at Price (“ADAP”) data feed includes the five best price levels in SuperMontage and the aggregate size of attributable and non-attributable quotes and orders at each of the five price levels, but does not include the individual quotes and orders that make up the aggregate size. The Prime data feed provides all of the information in the ADAP data feed plus the individual quotes and orders at the top five price levels in SuperMontage.<sup>6</sup>

<sup>6</sup> If a market participant has multiple attributable orders at one price, the total number of shares available from that market participant at that price is displayed in Prime. The total number of shares making up unattributable quotes and orders at a given price display under the SIZE moniker.

In this rule filing, Nasdaq proposes to rename Prime as the Nasdaq TotalView Data Feed and expand it to include all of the Prime data feed information at all price levels in SuperMontage, rather than just the top five price levels. Nasdaq also proposes to discontinue the ADAP data feed since all of the data currently offered through it would be available in the new TotalView Data Feed. Nasdaq proposes no change to its distributor fees or its professional or non-professional subscriber fees.<sup>7</sup> Under Nasdaq's proposal, current ADAP-only distributors that wish to continue to distribute only the aggregate data (*i.e.*, the aggregate size of attributable and non-attributable quotes and orders at each price level) that is received either directly from Nasdaq via the new TotalView Data Feed or from another distributor may do so for the same distributor fee Nasdaq charges today.<sup>8</sup>

Nasdaq believes that the proposed rule change offers many benefits to investors and market data vendors. First, expanding the Prime data feed to cover all price levels, rather than just the top five price levels, enhances the transparency of the Nasdaq market for both securities professionals and individual investors. Second, current Prime distributors will have an opportunity to reduce their telecommunications charges because the new TotalView Data Feed is expected to use less bandwidth than the Prime data feed. Although the TotalView Data Feed will carry more price levels, it will not have to accommodate message traffic for eliminating quotes that have fallen out of the top five levels in SuperMontage as the Prime data feed did. Third, because the TotalView Data Feed will contain all of the data that is currently carried in the NQDS data feed plus the aggregate size information, some data recipients may choose to discontinue receipt of the NQDS data feed as a way to save telecommunications costs.<sup>9</sup>

<sup>7</sup> The currently applicable subscriber fees are set forth in proposed paragraph (q)(5) of NASD Rule 7010.

<sup>8</sup> The fee for distributing the aggregate data only from the TotalView data feed will remain \$1,000 per month under NASD Rule 7010(q)(1)(C). The fee for distributing the complete TotalView data feed will remain \$7,500 per month under NASD Rule 7010(q)(2)(A).

<sup>9</sup> NQDS is the Nasdaq Quote Dissemination Service, a data feed that includes all quotes for Nasdaq issues. The NASD is required to provide the best bid and offer and quote size of each member acting as a market maker under SEC Rule 11Ac1-1(b)(1)(ii), 17 CFR 240.11Ac1-1(b)(1)(ii). As the Securities Information Processor for the UTP Plan, Nasdaq also provides a data feed of the best bid and offer for each Nasdaq issue (the UTP Quote Data Feed or “UQDF”) and last sale information (the UTP Trade Data Feed or “UTDF”). The UQDF and UTDF information are sometimes referred to as

Nasdaq also proposes to eliminate ADAP because the market for it as a separate data feed has been extremely limited. Nasdaq represents that the cost of maintaining a separate feed that carries redundant information is substantial, and Nasdaq does not recoup its costs from the few distributors choosing to take only ADAP. Nasdaq also believes that eliminating the ADAP feed will enable Nasdaq to reduce its overall costs, enabling greater opportunities to maintain low prices on all data products. Finally, Nasdaq represents that almost all of the current recipients of ADAP already receive the Prime data feed. Nasdaq believes that the elimination of ADAP feed will result in minimal disruption to the current recipients.

The proposed rule change also corrects certain subsection and footnote designations that were inadvertently duplicated in the adoption of SR-NASD-2003-27 and SR-NASD-2003-111. SR-NASD-2003-27 added new subsections (q)(3) and (q)(4) and new footnotes 3, 4, and 5, although footnotes with such numbers already existed in the then-effective rule. Nasdaq proposes to correct the duplicate footnote issue by eliminating all footnotes and adding the footnote text to the rule text or to the new subsection (q)(6) or (q)(7) as appropriate. SR-NASD-2003-111 inadvertently added a second subsection designated as (q)(4), which is redesignated as (q)(5). Nasdaq also proposes other non-substantive changes to the rule to make it more readable and consistent.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,<sup>10</sup> in general and with section 15A(b)(5)<sup>11</sup> and 15A(b)(6)<sup>12</sup> of the Act, in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls, and it benefits investors and market data vendors. Under the proposal, one data feed will be expanded and another will be discontinued, but Nasdaq will not change its prices for either distributors or professional or non-professional subscribers. Nasdaq believes that expanding the Prime data feed to cover

all price levels, rather than just the top five price levels, enhances the transparency of the Nasdaq market for both securities professionals and individual investors. In addition, Nasdaq believes that most market data distributors will have an opportunity to reduce their telecommunications charges and/or the number of feeds they receive.

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

Nasdaq 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. Nasdaq believes that the expansion of the Prime data feed to include all price levels will benefit distributors and subscribers by providing more data at the same price. Nasdaq also believes that this benefit substantially outweighs any potential additional cost to the few distributors receiving only the ADAP feed directly from Nasdaq that may have to increase the bandwidth of their telecommunications lines to receive the new TotalView data feed directly from Nasdaq. Nasdaq represents that the proposed rule change also would not violate any of Nasdaq's contractual obligations.

### *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, as amended, 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](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-NASD-2003-162. 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 refer to File No. SR-NASD-2003-162 and should be submitted by January 7, 2004.

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

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48894; File No. SR-PCX-2003-42]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. To Amend its Rules Governing the Execution of Complex Orders Involving Options and Single Stock Futures**

December 8, 2003.

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> notice is hereby given that on August 15, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule

Level 1. Nasdaq is required under current law to offer the preceding three products. In contrast, the ViewSuite products are proprietary and Nasdaq has no legal obligation to offer them.

<sup>10</sup> 15 U.S.C. 78o-3.

<sup>11</sup> 15 U.S.C. 78o-3(b)(5).

<sup>12</sup> 15 U.S.C. 78o-3(b)(6).

<sup>13</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.