

2003, respectively.⁵ The proposed rule change, as amended, was published for comment in the **Federal Register** on December 9, 2003.⁶ The Commission received no comment letters on the proposal. Nasdaq also submitted Amendment No. 4 to the proposed rule change on January 9, 2004.⁷ This order approves the proposed rule change, as amended.⁸

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association⁹ and, in particular, the requirements of section 15A of the Act¹⁰ and the rules and regulations thereunder. Specifically, the Commission believes that the proposed rule change is consistent with section 15A(b)(6) of the Act,¹¹ which, among other things, requires that NASD's rules be designed 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 notes Nasdaq's proposed DOs are substantially similar to an order type approved for the Archipelago Exchange, the trading facility for Pacific

Exchange Equities, Inc.¹² Further, the Commission believes that DOs should provide market participants increased flexibility in expressing their trading interest by allowing them to enter orders with a displayed bid or offer price and a non-displayed discretionary price range within which the participant is also willing to buy or sell. This may, in turn, enhance order interaction in Nasdaq.

The Commission notes that DOs may be entered, but not displayed or executed, prior to the market open. Under the proposal, DOs entered prior to the market open that would create locked or crossed markets if they were displayed will be held in a time-priority queue (along with Immediate-or-Cancel orders) for processing at 9:30 a.m. If a DO locks or crosses the market after the opening it would be processed quickly and automatically pursuant to NASD Rule 4710(b)(3)(A). As a result, DOs entered prior to the open should not increase the frequency of locked and crossed markets at the open.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹³ that the proposed rule change and Amendment Nos. 1, 2, 3, and 4 thereto (File No. SR-NASD-2003-165) are 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 Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² to rename the Nasdaq Prime data feed as the TotalView Data Feed, to expand it to include quotes and orders at all price levels associated with an individual issue traded on Nasdaq, and to discontinue the Nasdaq Aggregated Depth at Price ("ADAP") data feed. On December 5, 2003, Nasdaq submitted Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended, was published for comment in the **Federal Register** on December 17, 2003.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.⁵

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,⁶ and, in particular, with the requirements of section 15A of the Act.⁷ Specifically, the Commission finds that the proposal is consistent with sections 15A(b)(5)⁸ and 15A(b)(6)⁹ of the Act 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 NASD operates or controls, promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market

Assistant Director, Division, Commission, dated November 20, 2003 ("Amendment No. 2").

⁵ See letter from John M. Yetter, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated November 26, 2003 ("Amendment No. 3").

⁶ See Securities Exchange Act Release No. 48868 (December 3, 2003), 68 FR 68677.

⁷ See letter from John M. Yetter, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated January 8, 2004 ("Amendment No. 4"). In Amendment No. 4, Nasdaq amended the proposed rule text to reflect the Commission's approval of SR-NASD-2003-143. See Securities Exchange Act Release No. 49020 (January 5, 2004) 69 FR 1769 (January 12, 2004). The Commission notes that this is a technical, non-substantive amendment and not subject to notice and comment.

⁸ Nasdaq intends to implement the DO within three weeks of Commission approval, and will inform market participants of the exact implementation date via a Head Trader alert on <http://www.nasdaqtrader.com>. Telephone conversation between John Yetter, Assistant General Counsel, Nasdaq, and Marc McKayle, Special Counsel, Division, Commission on January 15, 2004.

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

¹⁰ 15 U.S.C. 78o-3.

¹¹ 15 U.S.C. 78o-3(b)(6).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49088; File No. SR-NASD-2003-162]

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

January 16, 2004.

On October 29, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the

¹² See Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (Order approving SR-PCX-00-25).

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 4, 2003.

⁴ See Securities Exchange Act Release No. 48902 (December 10, 2003), 68 FR 70324.

⁵ Nasdaq intends to expand the TotalView Data Feed on or after April 1, 2004 and to discontinue 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 days before it is implemented. Nasdaq has represented that 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.

⁶ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78o-3.

⁸ 15 U.S.C. 78o-3(b)(5).

⁹ 15 U.S.C. 78o-3(b)(6).

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.

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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.

* * * * *

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.