

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 the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2003-18 and should be submitted by May 8, 2003.

#### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>9</sup> in that it will provide market participants with a source of closing price information for Nasdaq securities in addition to that disseminated by Nasdaq, which will enhance intermarket competition by providing an additional information source for market participants to assess and compare pricing and execution quality among different markets trading Nasdaq securities.

The Exchange has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register** to accommodate trading in Nasdaq securities on the Amex in accordance with existing Amex rules governing "at the close" transactions. The Commission believes that the establishment of MOC and LOC procedures for Nasdaq securities by the Exchange should benefit investors, generally, and that the proposal's

temporary exception regarding "pair off" transactions should prevent the Exchange from being unfairly disadvantaged until such time as the Nasdaq UTP Processor can complete the necessary technical enhancements.

Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,<sup>10</sup> for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because it will permit the Amex to disseminate its Official Closing Price for Nasdaq securities traded on the Amex utilizing the "M" sale condition at or about the time such condition is utilized by Nasdaq.<sup>11</sup> In addition, the proposed rule change regarding the exemption from reporting "pair off" transactions as "stopped stock" will be implemented on a pilot basis, pending the Nasdaq UTP Processor's implementation of necessary systems changes.

#### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-Amex-2003-18), is hereby approved on an accelerated basis.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-9476 Filed 4-16-03; 8:45 am]

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47663; File No. SR-NASD-2003-67]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. To Extend Operation of NASD's Alternative Display Facility on a Pilot Basis

April 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 April 7,

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> Nasdaq has announced that it expects to place the "M" sale condition into production on April 14, 2003. The "M" sale condition will be utilized to disseminate the Nasdaq Official Closing Price on the Nasdaq market. See Release No. 34-47517, *supra* note 5.

<sup>12</sup> See *supra* note 10.

<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.

2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which NASD has prepared. NASD has designated the proposed rule change as constituting a "non-controversial" rule change under Rule 19b-4(f)(6),<sup>3</sup> which renders the proposal effective upon receipt of this filing by 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 is proposing to extend for nine months the operation of its Alternative Display Facility ("ADF") on a pilot basis. The current ADF pilot program, which the SEC approved on July 24, 2002, is due to expire on April 24, 2003. The pilot program permits members to quote and trade only Nasdaq-listed securities on or through the ADF. In addition, the proposed rule change would amend NASD Rule 4613A to clarify that ADF market participants must have in close proximity to their ADF Facility terminal at which they make a market in a Nasdaq security quotation data from all markets trading Nasdaq securities.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

\* \* \* \* \*

4000A. NASD Alternative Display Facility

4100A. General

NASD Alternative Display Facility ("ADF") is the facility to be operated by NASD on a nine-month pilot basis for members that choose to quote or effect trades in Nasdaq securities ("ADF-eligible securities") otherwise than on Nasdaq or on an exchange. The ADF will collect and disseminate quotations, compare trades, and collect and disseminate trade reports. Those NASD members that utilize ADF systems for quotation or trading activities must comply with the Rule 4000A, Rule 5400 and Rule 6000A Series, as well as all other applicable NASD Rules. The ADF pilot will expire on [April 24, 2003] *January 26, 2004*.

\* \* \* \* \*

4613A. Character of Quotations

(a) through (d) No change.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

(e) Other Quotation Obligations.

(1) No change.

(2) *As required by Rule 11Ac1-2(e) under the Exchange Act [A] a member that uses an ADF terminal or other approved ADF electronic interface [is registered as a market maker in a Nasdaq security] shall be obligated to have available in close proximity to the ADF [NASD's Alternative Display Facility] terminal or interface [at which it makes a market in a Nasdaq security] a quotation service that disseminates the bid price and offer price from all markets trading [then being furnished by or on behalf of other market makers trading and quoting] 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

*a. Pilot Extension.* On July 24, 2002, the Commission approved SR-NASD-2002-97,<sup>4</sup> 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. As described in detail in SR-NASD-2001-90, the ADF is a quotation collection, trade comparison, and trade reporting facility developed by NASD in accordance with the Commission's SuperMontage Approval Order<sup>5</sup> and in conjunction with Nasdaq's anticipated registration as a national securities exchange.<sup>6</sup> In addition, on January 30, 2003, NASD filed proposed rule change SR-NASD-2003-009 to revise the transaction and quotation-related fees applicable to ADF

activity during the pilot program. The rule change proposal became effective upon filing, with an implementation date of February 17, 2003.

As proposed in SR-NASD-2001-90, the ADF would provide market participants the ability to quote and trade Nasdaq and exchange-listed securities. The current ADF pilot program, however, permits operation of the ADF with respect to Nasdaq securities only. This is because, at the time of SEC approval, several regulatory issues relating to the trading of exchange-listed securities on the ADF had not been resolved.

According to NASD, the ADF has been operating successfully during the pilot period. NASD believes that the SEC, in approving the launch of SuperMontage, stated that the ADF met the conditions set forth in its SuperMontage Approval Order to provide an alternative quotation collection, trade comparison and trade reporting facility. NASD also notes that the issues related to trading exchange-listed securities—and by extension, approval of the operation of ADF on a permanent basis—remain unresolved.

Accordingly, NASD believes it is appropriate to extend the pilot period for ADF trading in Nasdaq securities, as set forth in SR-NASD-2002-97 and SR-NASD-2003-09, until January 25, 2004 or until approval of SR-NASD-2001-90.

*b. Close Proximity Rule.* In addition, the proposed rule change would amend NASD Rule 4613A to clarify that ADF market participants must have in close proximity to their ADF terminals (or other approved ADF electronic interfaces) quotation data from all markets trading Nasdaq securities. NASD believes that the current language in the rule suggests that ADF market participants must have quotation data in close proximity only from other market makers. NASD represents that it always intended for Rule 4613A to ensure that ADF market participants comply with the Vendor Display Rule.<sup>7</sup> NASD believes that the proposed change reflects more recent guidance from the SEC that market participants must have readily available quotation data from all markets trading Nasdaq securities, not just market makers.<sup>8</sup>

### 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

NASD neither solicited nor received written comments on this proposed rule change. NASD did solicit written comments on rule change proposals SR-NASD-2001-90 and SR-NASD-2002-28, the underlying rule filings to SR-NASD-2002-97 and SR-2003-009, respectively. NASD responded to the comments received in response to SR-NASD-2001-90 in its Amendment No. 2 to that filing, which was submitted to the SEC on May 24, 2002. NASD responded to the comments received in response to SR-NASD-2002-28 in its Amendment No. 1 to that filing, which was submitted to the SEC on May 14, 2002.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NASD has designated the proposed rule change as a "non-controversial" rule change that is effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> NASD has represented that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition.

NASD requested that the Commission waive the written notice of its intent to file the proposed rule change set forth in Rule 19b-4(f)(6)(iii).<sup>11</sup> In addition, NASD has requested that the Commission waive the requirement that the rule change not become operative for 30 days after the date of the filing, as set forth in Rule 19b-4(f)(6)(iii),<sup>12</sup> to prevent the current ADF pilot program from lapsing. The Commission finds good cause for the proposed rule change to become operative prior to the 30th day after the date of publication of notice of filing to assure the uninterrupted operation of the ADF pilot after April 24, 2003.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

<sup>4</sup> Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002).

<sup>5</sup> Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (SR-NASD-99-53).

<sup>6</sup> Securities Exchange Act Release No. 44396 (June 7, 2001) 66 FR 31952 (June 13, 2001).

<sup>7</sup> See 17 CFR 240.11Ac1-2(c), Rule 11Ac1-2(c) under the Exchange Act.

<sup>8</sup> See letter from Robert L. D. Colby, Deputy Director, Division of Market Regulation, SEC, to T. Grant Callery, Executive Vice President and General Counsel, NASD, dated March 18, 2003.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> *Id.*

or otherwise in furtherance of the purposes of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NASD and, in particular, the requirements of section 15A of the Act<sup>13</sup> and the rules and regulations thereunder.

**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 NASD. All submissions should refer to SR-NASD-

2003-67 and should be submitted by May 8, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-9413 Filed 4-16-03; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-47661; File No. SR-NASD-2003-51]**

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding Fees for the Automated Confirmation Transaction Service ("ACT")**

April 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 March 24, 2003 the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). On March 27, 2003, Nasdaq amended the proposed rule change.<sup>3</sup> The proposed rule change

is described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Nasdaq proposes to reduce fees for the use of the Automated Confirmation Transaction Service ("ACT").<sup>6</sup> Nasdaq will implement the proposed rule change on April 1, 2003.

The text of the proposed rule change, as amended, is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

\* \* \* \* \*

**7000. CHARGES FOR SERVICES AND EQUIPMENT**

**7010. System Services**

- (a)-(f) No change.
- (g) Automated Confirmation Transaction Service.

The following charges shall be paid by the participant for use of the Automated Confirmation Transaction Service (ACT):

**Transaction Related Charges:**

<i>Reporting of transactions executed through SuperMontage (or any other transaction execution system that makes use of SuperMontage's functionality to report transactions).</i>	<i>\$0.029/side.</i>
<i>Reporting of all other transactions in Nasdaq National Market and SmallCap Market securities not subject to comparison through ACT ("Covered Transactions")</i>	
<i>Average daily volume of media transaction reports for Covered Transactions during the month in which a participant is the reporting party:</i>	<i>Fee per side for reports of Covered Transactions to which such participant is a party:</i>
<i>0 to 10,000 .....</i>	<i>\$0.029.</i>
<i>10,001 to 50,000 .....</i>	<i>\$0.029 for a number of reports equal to 10,000 times the number of trading days in the month \$0.015 for all remaining reports.</i>
<i>More than 50,000 .....</i>	<i>\$0.029 for a number of times the number of trading days in the month \$0.015 for a number of reports equal to 40,000 times the number of trading days in the month \$0.00 for all remaining reports.</i>
<i>Reporting of all other transactions not subject to comparison through ACT.</i>	<i>\$0.029/side.</i>
Comparison .....	\$0.0144/side per 100 shares (minimum 400 shares; maximum 7,500 shares).
[Automated Give-Up] .....	[\$0.029/side].
Late Report—T+N .....	\$0.288/side.
Browse/query .....	\$0.288/query.*
Terminal fee .....	\$57.00/month (ACT only terminals).

<sup>13</sup> 15 U.S.C. 78o-3

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See March 26, 2003 letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine

England, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, Nasdaq revised the description of the proposed rule to specify the circumstances under which Nasdaq will aggregate trade reports for corporate entities.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> This filing applies to usage of ACT by NASD members. The usage of ACT by non-members is governed by NASD Rule 6120.