

**Barbara Z. Sweeney**  
Senior Vice President and  
Corporate Secretary

November 25, 2003

Katherine A. England  
Assistant Director  
Division of Market Regulation  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549-1001

**Re: File No. SR-NASD-2003-175 — Proposed Amendments to Repeal Rule  
4613A(e)(1) Requiring Same-Priced Quotations on Multiple Markets**

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed please find the above-numbered rule filing. Also enclosed is a 3-1/2" disk containing the rule filing in Microsoft Word 7.0 to facilitate production of the Federal Register release.

If you have any questions, please contact Stephanie Dumont, Associate Vice President, at (202) 728-8176; or Grace Yeh, Assistant General Counsel, at (202) 728-6939, both of the Office of General Counsel, Regulatory Policy and Oversight, NASD. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Barbara Z. Sweeney  
Senior Vice President  
and Corporate Secretary

Enclosures

cc: John S. Polise

File No. SR-NASD-2003-175  
Consists of 13 Pages  
November 25, 2003

**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C.

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Form 19b-4

Proposed Rule Change

by

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

Pursuant to Rule 19b-4 under the  
Securities Exchange Act of 1934

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”), the National Association of Securities Dealers, Inc. (“NASD”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to repeal Rule 4613A(e)(1), which requires members that display priced quotations for a Nasdaq security on multiple market centers to display the same-priced quotations on each market center. Proposed deletions are in brackets.

\* \* \* \* \*

**4613A. Character of Quotations**

(a) through (d) No change.

**(e) Other Quotation Obligations**

[(1) Members that display priced quotations on a real-time basis for Nasdaq securities in two or more market centers that permit quotation updates on a real-time basis must display the same priced quotations for the security in each market center.]

[(2)] As required by Rule 11Ac1-2(e) under the Exchange Act, a member that uses an ADF terminal or other approved ADF electronic interface shall be obligated to have available in close proximity to the ADF terminal or interface a quotation service that disseminates the bid price and offer price from all markets trading that Nasdaq security.

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by the Board of Directors of NASD Regulation, Inc. at its meeting on November 12, 2003, which authorized the filing of the rule change with the SEC. Counsel for The Nasdaq Stock Market and NASD Dispute Resolution have been provided an opportunity to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by NASD to its Subsidiaries. The NASD Board of Governors had an opportunity to review the proposed rule change at its meeting on November 13, 2003. No other action by NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of the NASD By-Laws permits the NASD Board of Governors to adopt amendments to NASD Rules without recourse to the membership for approval.

The effective date of the proposed rule change will be the date of Commission approval of the proposed rule change. NASD will announce the approval of the proposed rule change in a Notice to Members to be published no later than 30 days following Commission approval.

(b) Questions regarding this rule filing may be directed to Stephanie Dumont, Associate Vice President, at (202) 728-8176, or Grace Yeh, Assistant General Counsel, at (202) 728-6939, both of the Office of General Counsel, Regulatory Policy and Oversight, NASD.

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

(a) Purpose

NASD is proposing to repeal Rule 4613A(e)(1), which requires members that display priced quotations for a Nasdaq security in two or more market centers to display the same priced quotations for that security in each market center. Pursuant to this rule, members that choose to quote in multiple market centers are not permitted to display an inferior quote in any of those market centers. Rule 4613A(e)(1) was proposed as part of the Alternative Display Facility (“ADF”) pilot rules<sup>1</sup> because NASD believed it important to prevent fragmentation of quotations by a member (which might serve to undermine the transparency of the best quotes in the market), given the increased potential that members might choose to dual quote on several market centers, including ADF. This provision was modeled closely after Rule 2320(g)(2), which applies to over-the-counter (“OTC”) securities, such as those securities quoted through the OTC Bulletin Board and the Electronic Pink Sheets.

Since its adoption, NASD has monitored the impact of Rule 4613A(e)(1) and believes that the benefits of the same-priced quotation requirement to the trading in Nasdaq securities have been difficult to quantify. As an initial matter, the SEC’s vendor display rule (Rule 11Ac1-2 under the Exchange Act) generally requires that vendors provide a consolidated display of quotation information for Nasdaq securities from all reporting market centers. As such, the vendor display rule ensures that quotations in Nasdaq securities from each market center are visible, thereby facilitating transparency in the market and best execution. A similar provision,

however, does not apply to the OTC market, making it more important to require that members display the same priced quotation in multiple markets to preserve transparency in that marketplace.

Further, Rule 4613A(e)(1) has resulted in problems given recent market structure developments. For example, a member now may have several completely distinct business units, such as a market making unit and an electronic communications network (“ECN”), which are used by different types of clients and, therefore, represent separate pools of liquidity. A member may choose to display quotations relating to its market-making unit on Nasdaq and its ECN on ADF. Under such circumstances, compliance with Rule 4613A(e)(1) would, in effect, require the member to consolidate these distinct business units for purposes of displaying quotations on each market, which would be contrary to the business model of the firm since these quotes represent separate liquidity pools. As an alternative, the member could establish separate broker/dealers for each business unit, which NASD believes is overly burdensome for members given the marginal benefits associated with Rule 4613A(e)(1).

For the reasons discussed above, NASD is proposing to repeal Rule 4613A(e)(1). However, NASD will continue, as it currently does today, to monitor and surveil for any potentially collusive or manipulative conduct relating to quotation activity on markets under its regulatory authority.

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<sup>1</sup> Exchange Act Release No. 46249 (July 24, 2002), 67 Fed. Reg. 49822 (July 31, 2002). Subsequent to the initial approval of the ADF rules, the Commission approved an extension of the pilot until January 26, 2004. Exchange Act Release No. 47633 (April 10, 2003), 68 Fed. Reg. 19043 (April 17, 2003).

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD'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 believes that the proposed rule change accomplishes these ends. In light of the SEC's vendor display rule, NASD believes Rule 4316A(e)(1) does not serve any additional beneficial purposes and may, in fact, interfere with competition and certain members' business models.

4. 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, as amended.

5. 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.

6. Extension of Time Period for Commission Action

NASD does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

Pursuant to the requirements of the Securities Exchange Act of 1934, NASD has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

NASD, INC.

BY: \_\_\_\_\_  
Barbara Z. Sweeney, Senior Vice President and  
Corporate Secretary

Date: November 25, 2003



SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-NASD-2003-175)  
November 25, 2003

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. to Repeal Rule 4613A(e)(1) Requiring Same-Priced Quotations on Multiple Markets

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 \_\_\_\_\_, 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. 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 repeal Rule 4613A(e)(1), which requires members that display priced quotations for a Nasdaq security on multiple market centers to display the same-priced quotations on each market center. Below is the text of the proposed rule change. Proposed deletions are in brackets.

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**4613A. Character of Quotations**

(a) through (d) No change.

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

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

**(e) Other Quotation Obligations**

[(1) Members that display priced quotations on a real-time basis for Nasdaq securities in two or more market centers that permit quotation updates on a real-time basis must display the same priced quotations for the security in each market center.]

[(2)] As required by Rule 11Ac1-2(e) under the Exchange Act, a member that uses an ADF terminal or other approved ADF electronic interface shall be obligated to have available in close proximity to the ADF terminal or interface a quotation service that disseminates the bid price and offer price from all markets trading that Nasdaq security.

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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

(a) Purpose

NASD is proposing to repeal Rule 4613A(e)(1), which requires members that display priced quotations for a Nasdaq security in two or more market centers to display the same priced quotations for that security in each market center. Pursuant to this rule, members that choose to quote in multiple market centers are not permitted to display an inferior quote in any of those market centers. Rule 4613A(e)(1) was proposed as part of the Alternative Display Facility (“ADF”) pilot rules<sup>3</sup> because NASD believed it important to prevent fragmentation of quotations by a member (which might serve to undermine the transparency of the best quotes in the market), given the increased potential that members might choose to dual quote on several market centers, including ADF. This provision was modeled closely after Rule 2320(g)(2), which applies to over-the-counter (“OTC”) securities, such as those securities quoted through the OTC Bulletin Board and the Electronic Pink Sheets.

Since its adoption, NASD has monitored the impact of Rule 4613A(e)(1) and believes that the benefits of the same-priced quotation requirement to the trading in Nasdaq securities have been difficult to quantify. As an initial matter, the SEC’s vendor display rule (Rule 11Ac1-2 under the Securities Exchange Act of 1934) makes the rule less critical to preserving transparency in the market. By generally requiring that vendors provide a consolidated display of quotation information for Nasdaq securities from all reporting market centers, the vendor display rule ensures that quotations from each market center are visible, thereby facilitating transparency in the

market and best execution. However, a similar provision does not exist in the OTC market, making it more important to require that members display the same priced quotation in multiple markets to preserve transparency in that marketplace.

Further, Rule 4613A(e)(1) has resulted in problems given recent market structure developments. For example, a member now may have several completely distinct business units, such as a market making unit and an electronic communications network (“ECN”), which are used by different types of clients and, therefore, represent separate pools of liquidity. A member may choose to display quotations relating to its market-making unit on Nasdaq and its ECN on ADF. Under such circumstances, compliance with Rule 4613A(e)(1) would, in effect, require the member to consolidate these distinct business units for purposes of displaying quotations on each market, which would be contrary to the business model of the firm since these quotes represent separate liquidity pools. As an alternative, the member could establish separate broker/dealers for each business unit, which NASD believes is overly burdensome for members given the marginal benefits associated with Rule 4613A(e)(1).

For the reasons discussed above, the proposed rule change would repeal Rule 4613A(e)(1). However, NASD will continue, as it currently does today, to monitor and surveil for any potentially collusive or manipulative conduct relating to quotation activity on markets under its regulatory authority.

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<sup>3</sup> Exchange Act Release No. 46249 (July 24, 2002), 67 Fed. Reg. 49822 (July 31, 2002). Subsequent to the initial approval of the ADF rules, the Commission approved an extension of the pilot until January 26, 2004. Exchange Act Release No. 47633 (April 10, 2003), 68 Fed. Reg. 19043 (April 17, 2003).

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD'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 believes that the proposed rule change accomplishes these ends. In light of the SEC's vendor display rule, NASD believes Rule 4316A(e)(1) does not serve any additional beneficial purposes and may, in fact, interfere with competition and certain member's business models.

(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, 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 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, N.W., Washington, D.C. 20549. 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 the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland  
Deputy Secretary