

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-2003-13 and should be submitted by April 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47587; File No. SR-NASD-2000-42]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Requirements for Recording and Reporting of Certain Quotation Data; Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1, 2, and 3 to the Proposed Rule Change

March 27, 2003.

I. Introduction

On July 3, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to establish requirements for the recording and reporting of certain quotation data. On October 5, 2000, the proposed rule change was published for

comment in the **Federal Register**.³ The Commission received one comment letter in response to the proposed rule change.⁴ The NASD responded to the comment letter and amended the proposed rule change on January 4, 2001.⁵ On June 14, 2001, the NASD submitted a letter clarifying a limitation on its proposed use of quotation data submitted in response to the proposed rule.⁶ On September 21, 2001, the NASD further amended its proposed rule change by filing Amendment No. 2.⁷ On February 27, 2003, the NASD filed Amendment No. 3 to its proposed rule change.⁸ This notice and order solicits comment on Amendment Nos. 1, 2 and 3 and approves the proposed rule change, as amended, on an accelerated basis.

II. Description of Proposed Rule Change

According to the NASD, in September 1999, the Electronic Pink Sheets ("EPS") began displaying real-time, on-line stock quotations for approximately 5,000 securities, including over-the-counter ("OTC") equity securities. Prior to the availability of EPS, quotations were published weekly in hardcopy lists known as the "pink sheets." These lists were updated via daily facsimile

³ See Securities Exchange Act Release No. 43367 (September 27, 2000), 68 FR 59482.

⁴ See letter from R. Cromwell Coulson, Chairman and CEO, Pink Sheets LLC ("Pink Sheets") to Jonathan G. Katz, Secretary, Commission, dated October 26, 2000 ("Pink Sheets Letter").

⁵ See letter from Jeffrey S. Holik, Vice President and Acting General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 4, 2001 ("NASD Response to Comments and Amendment No. 1"). NASD Response to Comments and Amendment No. 1: (1) Addressed comments submitted by Pink Sheets; and (2) amended the proposed rule's text to clarify the conditions under which a member would be required to withdraw its quotations for non-compliance with the proposed rule's requirements.

⁶ See letter from Jeffrey S. Holik, Vice President and Acting General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated June 14, 2001 ("NASD Letter"). The NASD Letter clarified that quotation data provided to the NASD pursuant to the proposed rule would not be provided to The Nasdaq Stock Market, Inc.

⁷ See letter from Jeffrey S. Holik, Vice President and Acting General Counsel, NASD Regulation, to Nancy J. Sanow, Assistant Director, Division, Commission, dated September 21, 2001. ("Amendment No. 2"). In Amendment No. 2, the NASD revised the proposed rule's text to state expressly that the rule would not apply to quotations on inter-dealer quotation systems operated by a registered securities association or national securities exchange.

⁸ See letter from Stephanie M. Dumont, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated February 26, 2003. ("Amendment No. 3"). The amendment clarified that the NASD will not use an inside bid and/or offer that is calculated and submitted by the Reporting Agent for any commercial purposes.

transmission to subscribers. To obtain more current quotations for securities published in the pink sheets, market participants would communicate directly with broker-dealers publishing quotations in that medium, including unpriced indications of interest for the particular security.

NASD Regulation represents that because quotations for OTC equity securities now are displayed on a real-time basis in inter-dealer quotation systems, such as the pink sheets, NASD Regulation staff requires access to data pertaining to those quotations in order to surveil adequately for member compliance with applicable rules and regulations and, when necessary, to reconstruct market activity.

Therefore, the NASD proposed NASD Rule 6630 to require its members to: (1) Record specified information pertaining to quotations for OTC equity securities displayed in an inter-dealer quotation system⁹ that permits real-time quotation updates, unless such system is operated by a registered securities association, a national securities exchange or an NASD member; (2) preserve the quotation information for the period of time and accessibility set forth in Rule 17a-4(a) under the Act;¹⁰ and (3) report the quotation information to the NASD upon request.

Under the proposed rule, NASD members that publish quotations in inter-dealer quotation systems covered by the rule ("covered quotation systems") would be required to record, among other things, the time of the quotation's display, the bid price and quotation size, the offer price and quotation size, and the prevailing inside bid and offer in the quotation system at the time of the quotation.¹¹ The proposed rule would apply to priced quotes and unpriced indications of interest. The NASD proposal would permit members to enter into an agreement with a third party that would act as the agent for fulfilling the member's obligations under the rule.

NASD Regulation represents that it would use quotation data obtained pursuant to the proposed rule to surveil,

⁹ Rule 15c2-11(e) of the Act defines inter-dealer quotation system as "any system of general circulation to brokers or dealers that regularly disseminates quotations of identified brokers or dealers." 17 CFR 240.15c2-11(e).

¹⁰ 17 CFR 240.17a-4(a). Pursuant to Rule 17a-4(a) under the Act, members would be required to preserve records of such data for at least six years. During the first two of the six years, members would be required to maintain the records "in an easily accessible place."

¹¹ See Amendment No. 3, *supra* note 8, which clarifies that a member should not consolidate quotation information from other systems or markets that are quoting the security.

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

for example, for compliance with NASD Rule 3320, *Offers at Stated Prices*, which requires that a member's quotation be "firm,"¹² and NASD Rule 6750, *Minimum Quotation Size Requirements for OTC Equity Securities*, which requires that every member firm that functions as a market maker in OTC equity securities on an inter-dealer quotation system that permits quotations to be updated on a real-time basis must honor those quotations for the minimum size applicable to the member firm's firm bid or ask price. NASD Regulation represents that although it has access to trade execution data through existing trade reporting requirements and systems, it does not otherwise have access to historical quotation activity at the time of trades.

As originally proposed, the rule change would not apply to quotations displayed on an inter-dealer quotation system that is qualified pursuant to section 17B of the Act.¹³ In Amendment No. 2, the NASD proposed revising the rule text to state expressly that the exclusion applies to quotations on an inter-dealer quotation system that is operated by a registered securities association or national securities exchange. NASD Regulation observed that the registered securities association or national securities exchange operating such an inter-dealer quotation system would have access to quotation information displayed on that system. Therefore, the NASD would not require members to record and report information pertaining to quotations entered into inter-dealer quotation systems operated by a registered securities association or national securities exchange. NASD Regulation noted that, under this exclusion, members would not need to record and report quotation information for quotations on the OTC Bulletin Board, which is sponsored and regulated by the NASD.

The proposed rule change also would not apply to an inter-dealer quotation

system operated by a member of the NASD. The NASD indicated that if an NASD member were to operate an inter-dealer quotation system, the NASD would be able to receive the pertinent quotation data (or, in some cases, the display of limit orders) directly from the NASD member operating the system.

The proposed rule change would permit a member to use an agent to provide the quotation data to the NASD ("Reporting Agent").¹⁴ The NASD believes that most or all members that would be required to provide quotation data under the proposed rule would use the services of a Reporting Agent, which likely would be the operator of the inter-dealer quotation system.

NASD Regulation anticipates that if a system operator agrees to be a member's Reporting Agent, the system operator would provide all relevant quotation data directly to NASD Regulation on a daily or ongoing basis. Notwithstanding a member's use of a Reporting Agent to furnish quotation information, the member would remain responsible for compliance with all requirements of the proposed rule. If a member knew or had reason to believe that it or its Reporting Agent was not in compliance with the proposed rule, the member would be required to withdraw its quotations or unpriced indications of interest from the inter-dealer quotation system until the member was satisfied that quotation data is being properly recorded and reported.¹⁵ In this regard, NASD Regulation stated that it would expect members that use a Reporting Agent to periodically review or monitor its activities in order to ensure continued compliance with the proposed rule.

Under the NASD's original proposed rule change, if a member knew or had reason to believe that its Reporting Agent was not in compliance with the proposed rule, the member would be required to *immediately* withdraw its priced quotations and unpriced indications of interest. In response to concerns that problems with data systems could interfere with the ability of a member or its Reporting Agent to comply with the proposed rule, the NASD proposed removing the word "immediately" from the proposed rule's text.¹⁶

¹⁴ NASD Rule 6630(e) would define "Reporting Agent" as "a third party that enters into any agreement with a member pursuant to which such third party agrees to fulfill such member's obligations under this Rule."

¹⁵ See NASD Response to Comments and Amendment No. 1, *supra* note 5.

¹⁶ NASD Response to Comments and Amendment No. 1. A literal reading of the original proposed rule text would have required a member to withdraw its quotations only if the member knew or had a reasonable belief that its Reporting Agent was not

To ensure that its members have adequate time to implement the proposed rule, the NASD represented that, if approved, it will announce the operative date of the proposed rule change in a Notice to Members to be published no later than 60 days following the date of Commission approval. The operative date will be 30 days following publication of the Notice to Members.

III. Summary of Comments and NASD Response

The Commission received one comment letter in response to the proposed rule change. The letter, from Pink Sheets: (1) Expressed concern regarding the NASD's proposal to obtain quotation information based on regulation of NASD members rather than through the negotiation of a private contract between NASD Regulation and Pink Sheets; (2) stated that NASD Regulation must acknowledge Pink Sheets' private property rights in the data and provide assurances that this data will be protected, and not redistributed in competition with Pink Sheets; (3) stated that NASD members should not bear the entire responsibility for ensuring that the NASD receives the proper information; (4) stated that NASD members should not be required to withdraw quotations without time to address data systems problems when such problems are the cause of non-compliance; (5) asserted that the proposed rule should set forth the form in which required data must be provided; and (6) questioned the basis of the proposed rule's exclusion for systems operated by a registered securities association or national securities exchange.¹⁷ Pink Sheets also noted its view that the proposed rule change is overly restrictive and should apply to bond quotation services and order routing and negotiation services in addition to electronic quotation services. These comments are discussed below, along with NASD Regulation's responses contained in NASD Response to Comments and Amendment No. 1.

A. Approach to Obtaining Quotation Data

Pink Sheets asserted that it has an intellectual property interest in the data that NASD members would be required to ensure was recorded, preserved, and provided to the NASD upon request. Pink Sheets posited that the negotiation

complying with the proposed rule. The NASD proposed a revision to the rule text clarifying that the member also must withdraw its quotes if the member itself is not complying with the proposed rule. *Id.*

¹⁷ Pink Sheets Letter, *supra* note 4.

¹² NASD Rule 3320 states: "No member shall make an offer to buy from or sell to any person any security at a stated price unless such member is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell." A member is expected to buy or sell at least a normal unit of trading in the quoted stock at its then prevailing quotations, unless the quotation is designated clearly as not firm or as firm for less than a normal unit of trading. NASD Firmness of Quotations Rule, IM-3320.

¹³ 15 U.S.C. 78q-2. Section 17B states that "[t]he Commission shall facilitate the widespread dissemination of reliable and accurate last sale and quotation information with respect to penny stocks* * *with a view toward establishing, at the earliest feasible time, one or more automated quotation systems that will collect and disseminate information regarding all penny stocks."

of a private contract between the NASD and the owner of an automated inter-dealer quotation system would more adequately address the needs of both the NASD and the system. In addition, Pink Sheets sought assurances that quotation data provided to the NASD pursuant to the proposed rule would not be redistributed in competition with Pink Sheets.

NASD Regulation has noted that it cannot rely on a contractual arrangement with the Pink Sheets. Because the NASD's jurisdiction extends only to its members and not to Pink Sheets and other inter-dealer quotation services, NASD Regulation believed that it could not impose a requirement on Pink Sheets to provide quotation data, and, therefore, Pink Sheets at any time could refuse to provide the quotation data. NASD Regulation stated that, although it could pursue legal action against the system operator for breach of such contract, it would be at risk of not having quotation data in the interim and thus would be unable to surveil effectively and monitor for compliance with applicable rules and regulations. Finally, NASD Regulation noted that it requires access to the quotation data for regulatory purposes and intends to use that data only for this purpose.¹⁸ Further, in its letter dated June 14, 2001, NASD Regulation specifically represented that quotation data submitted to the NASD or NASD Regulation under the proposed rule will not be provided to The Nasdaq Stock Market by the NASD or NASD Regulation.¹⁹ Also, in Amendment No. 3, the NASD represented that to the extent the member's Reporting Agent calculates an inside bid and/or offer and submits that inside bid and/or offer to the NASD, the NASD will not use this inside bid and/or offer for any commercial purposes.²⁰

B. Responsibility for Compliance

In the proposed rule change, the NASD stated that an NASD member would be fully responsible for compliance with the proposed rule whether or not the member used a Reporting Agent to provide quotation information. Pink Sheets argued that requiring NASD members to bear the responsibility for ascertaining whether the NASD is receiving quotation data would impose an undue burden on NASD members. Pink Sheets therefore suggested that the proposed rule be amended to require the NASD to notify

its members or their Reporting Agents if the NASD knows or has reason to believe that the NASD is not receiving quotation data.

NASD Regulation responded that it believes member firms must be responsible for compliance with the proposed rule and must put procedures in place to ensure proper reporting of quotation information. NASD Regulation stated, however, that it would be willing, upon request, to confirm whether it is receiving quotation information submitted pursuant to the proposed rule.

C. Withdrawal of Quotations

As originally proposed, non-compliance with the proposed rule would require a member to immediately withdraw its priced quotations and unpriced indications of interest. Pink Sheets expressed concern that this might require NASD members to immediately withdraw their quotations where non-compliance is the result of data systems problems.

NASD Regulation responded that it recognizes members or their Reporting Agents may experience systems problems that temporarily restrict their ability to record and report quotation information. Therefore, NASD Regulation stated that if a member or its Reporting Agent were unable to record or report quotation information due to a systems problem, the member would not be required to withdraw its quotations or unpriced indications of interest, as long as the problem did not extend beyond one trading day. NASD Regulation further noted that if the systems problem extended beyond one trading day, the proposed rule would require that the member withdraw its quotations or unpriced indications of interest, if the member is unable to use an alternative means to comply with the proposed rule. Reflecting this approach, the NASD amended the proposed rule so that it no longer requires quotations to be withdrawn immediately.²¹

Pink Sheets also expressed concern that market makers required to withdraw their quotations and unpriced indications of interest might lose their "piggyback" status under Rule 15c2-11 of the Act.²² Pink Sheets asserted that in

order to avoid this possible result, the proposed rule should be amended so that, in the case of non-compliance, members would only be required to withdraw their quotations, not their unpriced indications of interest. NASD Regulation responded that if quotation information, including unpriced indications of interest, is not properly recorded and reported, the NASD could not ensure that its members are in compliance with applicable rules.

D. Data Standards

The proposed rule would require members to record and report quotation data "in such form as is prescribed by the Association from time to time." The proposed rule, however, specifies the items of information the quotation activity must contain. Pink Sheets argued that no quotation system should be held to "such a subjective standard." NASD Regulation responded that, under the proposed rule, the NASD would, in a Notice to Members, prescribe the form in which it would require data to be transmitted to the Association. NASD Regulation stated that its staff has met with a representative of Pink Sheets to discuss data transmission alternatives. Further, NASD Regulation stated that if it were to now stipulate the use of a specific transmission method, the NASD would not have the ability, should it be necessary, "to address varying systems transmissions capabilities."

E. Inter-Dealer Quotation Systems Covered by the Rule

As amended, proposed NASD Rule 6630 would not require the recording and reporting of quotations that are displayed on an inter-dealer quotation system that is either: (1) Operated by a registered securities association or national securities exchange; or (2) operated by an NASD member. In addition, since the rule applies only to OTC equity securities, it would not apply to electronic bond quotation services. Pink Sheets objected to the proposed rule's original exclusion of systems qualified pursuant to section 17B of the Act, which, by definition, are operated by either a national securities association or a national securities exchange.²³ Pink Sheets expressed concern that there is no rule that requires members to remove their

Once the security is quoted regularly for 30 days, other broker-dealers can "piggyback" off of those quotations, *i.e.*, submit quotations without reviewing information about the issuer. 17 CFR 24.15c2-11(f)(3).

²³ Amendment No. 2, *supra* note 7, revised the text of this exclusion to expressly exclude quotations displayed on an inter-dealer quotation system operated by a registered securities association or national securities exchange.

¹⁸ NASD Response to Comments and Amendment No. 1, *supra* note 5.

¹⁹ NASD Letter, *supra* note 6.

²⁰ Amendment No. 3, *supra* note 8.

²¹ If a systems problem extends beyond one trading day, causing quotation data to not be recorded or reported for a particular member, that member would then be required to withdraw from the quotation system. See NASD Response to Comments and Amendment No. 1, *supra* note 5.

²² Rule 15c2-11 requires a broker-dealer to review current information about an issuer before it publishes a quotation for the issuer's security in the non-Nasdaq OTC markets. Because of the rule's "piggyback" provision, generally only the first broker-dealer is required to review this information.

quotations from any of the exempt systems if the member believes or has reason to believe that the data is not being properly maintained by the exempt system. Pink Sheets expressed concern that the NASD could force market makers on the OTCBB that also quote in the EQS to abandon their use of the EQS. In addition, Pink Sheets inquired why the proposed rule would not apply to electronic bond quotation services.

With regard to the original proposal to exclude systems qualified under section 17B of the Act, NASD Regulation stated that, because those systems are sponsored and regulated by either a national securities association or national securities exchange, the association or exchange would be able to obtain quotation data directly from those systems. Regarding electronic bond quotation services, NASD Regulation stated that it does not currently require historical quotation information for regulation of the OTC component of the bond market. NASD Regulation represented, however, that it will continue to monitor bond market activity to determine whether it is necessary to impose, in that area, requirements similar to those described in the proposed rule change.

IV. Discussion

The Commission has carefully considered the proposed rule change and amendments thereto, along with the comment letter from Pink Sheets, as well as the response letter from NASD Regulation and the NASD Letter. The Commission finds that the NASD 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. In particular, the Commission finds that the proposed rule change is consistent with section 15A(b)(6) of the Act,²⁴ which requires the rules of a national securities association to 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. In addition, the Commission finds that the proposed rule change is consistent with section 15A(b)(2) of the Act,²⁵ which requires that a national securities association be organized and have the capacity to be able to carry out the purposes of the Act and to comply, and enforce compliance by its members and persons associated with its members, with the Act and rules and regulations

thereunder and the rules of the association.

The Commission finds that the proposed rule change is designed to ensure that the NASD receives quotation information that is necessary to adequately surveil member activity in OTC equity securities quoted on inter-dealer quotation systems that permit quotation updates on a real-time basis and that are not operated by a registered national securities association, a registered national securities exchange, or an NASD member. The required quotation information must be recorded and reported by the member itself or, on the member's behalf, though a Reporting Agent. The Commission believes that this quotation information is necessary for the NASD, through NASD Regulation, to adequately surveil member compliance with applicable rules and regulations in a trading environment where quotations for OTC equity securities are displayed on a real-time basis in those inter-dealer quotation systems for which the NASD does not otherwise have access to quotation data. Because these OTC equity securities often are microcap securities that can be the subject of fraud and manipulation, the Commission believes that it is vital for the NASD to have access to quotation information for these securities so that the NASD can properly carry out its regulatory responsibilities with respect to this market sector.

In considering this proposed rule change, the Commission observes that the NASD has amended the proposed rule change to address, and has clarified a number of points in response to, issues raised in the Pink Sheets Letter. Specifically, in response to comments made in the Pink Sheets Letter, the NASD revised the proposal with respect to the circumstances under which a member would be required to withdraw its quotes from the inter-dealer quotation system in the event of non-compliance with the rule's provisions. The Commission believes that the NASD's revisions address the Pink Sheets' concerns that an NASD member would be required to immediately withdraw its quotes where non-compliance is the result of a temporary data systems problem. The NASD also responded to the Pink Sheets' concern about the specificity of the standards in which the NASD would require data to be submitted by indicating that it would publish information regarding the prescribed form for recording and reporting the quotation information in a Notice to Members. Finally, the NASD responded to the Pink Sheets' objection that the proposed rule did not cover

electronic bond quote services by indicating that it would monitor activities to determine whether NASD Rule 6630 should in the future cover a broader range of securities. The Commission does not believe that the NASD's obligations as a self-regulatory organization ("SRO") to enforce compliance by its members with the Act requires it to apply the same rules to all the varied activities of its members. Instead, the Commission believes that, in many cases, it is appropriate for an SRO to tailor its rules to aid it in fulfilling its responsibilities with respect to a particular market segment. The Commission believes that this proposal is appropriately tailored to surveil a market segment that historically has experienced repeated instances of fraud and manipulation.

There are two issues raised by Pink Sheets that the Commission wishes to address further. First, Pink Sheets claimed that NASD Rule 6630 is anti-competitive because it excludes systems that are sponsored and regulated by a registered securities association or national securities exchange, and is unfairly targeted at EQS and its users. The Commission finds that the proposed rule's exclusion of quotations displayed in inter-dealer quotation systems operated by a registered national securities association or national securities exchange is consistent with the Act. To qualify for the exclusion, the system must be operated by an SRO registered with, and regulated by, the Commission. These SROs have responsibilities under the Act to surveil systems they operate. Accordingly, it is unnecessary, and would be needless and redundant, for the NASD to require its members to record and report information regarding quotations on such systems. On the other hand, the Commission believes that it is necessary for the NASD, as the principal regulator of the OTC equity market, to have the requisite information regarding quotations displayed by members in covered quotation systems to enable it to carry out its functions as an SRO. The Commission also believes that the NASD appropriately places the burden to provide the quotation information on its members, because it is these members over which the NASD is obligated to enforce compliance with the Act's provisions.²⁶ To reduce the costs and burdens on its members, however, the NASD will permit members to enter into an agreement

²⁴ 15 U.S.C. 78o-3(b)(6).

²⁵ 15 U.S.C. 78o-3(b)(2).

²⁶ 15 U.S.C. 78o-3(b)(2).

with a Reporting Agent to provide the information on the member's behalf.

Second, Pink Sheets expressed concern that quotation information provided to the NASD pursuant to the proposed rule could be used to compete against Pink Sheets. Pink Sheets also suggested that the NASD might use the quotation information in some way to advantage its OTC Bulletin Board, to the detriment of EQS. The Commission notes that NASD Regulation specifically represented that it requires access to this quotation data for regulatory purposes and intends to use the data only for this purpose²⁷ and that quotation data submitted to the NASD or NASD Regulation under the proposed rule change will not be provided to The Nasdaq Stock Market by the NASD or NASD Regulation.²⁸ Also, in Amendment No. 3, the NASD represented that to the extent the member's Reporting Agent calculates an inside bid and/or offer and submits that inside bid and/or offer to the NASD, the NASD will not use this inside bid and/or offer for any commercial purposes.²⁹

V. Accelerated Approval of Amendment Nos. 1, 2, and 3

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Under Amendment No. 1, the NASD clarified when a member must withdraw its quotes from an inter-dealer quotation system under the rule.

The Commission also finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. By expressly excluding from application of the proposed rule quotations entered into inter-dealer quotation systems that are operated by a registered national securities association or national securities exchange, Amendment No. 2 clarifies the proposed rule's scope. In addition, the Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of filing thereof in the **Federal Register**. By clarifying that the terms "prevailing inside bid" and "prevailing inside offer" refer to the prevailing inside bid and offer of the system under which the participant has

a responsibility to provide quotation activity under the proposed rule, Amendment No. 3 makes it clear that it is not necessary for a member to consolidate quotation information from other systems or markets that are quoting the same security. Amendment No. 3 also clarifies that the NASD will not use the inside bid/offer quotations collected and submitted by the Reporting Agent for any commercial purposes.

For these reasons, the Commission finds good cause, consistent with sections 15A(b)(2), 15A(b)(6) and 19(b)(2) of the Act, to accelerate approval of Amendment Nos. 1, 2, and 3 to the proposed rule change.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1, 2, and 3, including whether Amendment Nos. 1, 2, and 3 are 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, 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-2000-42 and should be submitted by April 24, 2003.

VII. Conclusion

It is therefore Ordered, pursuant to section 19(b)(2) of the Act,³⁰ that the proposed rule change (SR-NASD-00-42) be and hereby is, approved, and Amendment Nos. 1, 2, and 3 are approved on an accelerated basis.³¹

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47592; File No. SR-NASD-2003-03]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Waive Fees Assessed Under NASD Rule 7010(s) for New Subscribers to Nasdaq PostData

March 28, 2003.

I. Introduction

On January 9, 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 ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to waive for two months the fees assessed under NASD Rule 7010(s) for each new subscriber to Nasdaq PostData. The proposed rule change was published for notice and comment in the **Federal Register** on January 27, 2003.³ The Commission received one comment on the proposal.⁴ On March 20, 2003, Nasdaq responded to the comment letter.⁵ This order approves the proposed rule change.

³² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 47209 (January 17, 2003), 68 FR 3911.

⁴ See February 7, 2003 letter from Joseph L. Magill, Managing Director AutEx, Thomson Financial Banking and Brokerage ("Thomson"), to Jonathan G. Katz, Secretary, Commission, and attachments ("Thomson Letter"). The Thomson Letter includes as an attachment a January 10, 2003 letter, also from Joseph L. Magill to Jonathan G. Katz, commenting on SR-NASD-2002-184, a proposed rule change the NASD filed and later withdrew. Because the issues Thomson raised in its January 10, 2003 letter are also raised in the instant proposed rule change, Thomson submitted its January 10, 2003 letter as an attachment to its February 7, 2003 letter as a comment to SR-NASD-2003-03. When citing to page numbers of the Thomson Letter in this order, the Commission is referencing the page numbers of Thomson's January 10, 2003 letter.

⁵ See March 19, 2003 letter from Jeffrey S. Davis, Nasdaq, to Alden S. Adkins, Associate Director, Division of Market Regulation, Commission ("Nasdaq Letter").

²⁷ See NASD Response to Comments and Amendment No. 1, *supra* note 3.

²⁸ See NASD Letter, *supra* note 6.

²⁹ See Amendment No. 3, *supra* note 8.

³⁰ 15 U.S.C. 78s(b)(2).

³¹ In approving the proposed rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation.