

All comment letters should refer to File No. SR-NASD-2003-198. 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 be submitted by February 26, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49134; File No. SR-NASD-2003-199]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Listing Fee Waivers

January 28, 2004.

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 December 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") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. 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

Nasdaq proposes to waive retroactively certain listing fees. Below is the text of the proposed rule change. Proposed new language is underlined.

\* \* \* \* \*

#### 4500 Issuer Listing Fees

##### *IM-4500-2 Waiver of Fees Upon Application in Certain Merger Situations Occurring in 2003*

*Rules 4510(c)(2), 4510(d)(3), and 4520(d)(3) provide Nasdaq with the discretion to waive all or part of the annual listing fees prescribed in this Rule 4500 series. Pursuant to that authority, Nasdaq has determined to permit a Nasdaq issuer that completed a merger with another Nasdaq issuer during the first 90 days of 2003 to apply for and receive a waiver for 75% of the annual fees assessed to the acquired Nasdaq issuer. Issuers must apply for the credit no later than June 30, 2004. Applications should be addressed to: Finance Department CCG Billing Operations, The Nasdaq Stock Market Inc., 9513 Key West Avenue, 4th Floor, Rockville Maryland, 20850.*

\* \* \* \* \*

### 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

NASD Rules 4510(c)(2), 4510(d)(3), and 4520(d)(3) provide Nasdaq with the discretion to waive all or part of the annual listing fees prescribed in this Rule 4500 series. Pursuant to that authority, Nasdaq has determined to permit a Nasdaq issuer that completed a merger with another Nasdaq issuer during the first 90 days of 2003 to apply for and receive a waiver for 75% of the annual fees assessed to the acquired Nasdaq issuer. Issuers must apply for the credit no later than June 30, 2004.

Nasdaq has determined to take this action because it believes that it is equitable to provide a partial credit for annual listing fees in order to avoid the assessment of two fees where a merger has occurred within the first 90 days of a given billing year. Nasdaq will send a communication to issuers regarding the availability of this waiver.

##### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5)<sup>3</sup> and 15A(b)(6)<sup>4</sup> of the Act. Section 15A(b)(5) of the Act<sup>5</sup> requires that the rules of the NASD provide 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. Nasdaq believes that this proposal, which provides for a partial waiver of annual fees in certain merger situations, is an equitable allocation of fees.

#### 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.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

### 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 Exchange 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,

<sup>11</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.

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

<sup>4</sup> 15 U.S.C. 78o-3(b)(6).

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

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. 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-2003-199. 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 be submitted by February 26, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49152; File No. SR-NASD-2003-175]

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

January 29, 2004.

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 November 26, 2003, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange

Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 NASD 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.

\* \* \* \* \*

##### 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.

\* \* \* \* \*

#### 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

NASD is proposing to repeal NASD 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. NASD 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 NASD 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 NASD 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, NASD believes that the Commission's vendor display rule (Rule 11Ac1-2 under the Act) makes NASD Rule 4613A(e)(1) less critical to preserving transparency in the market. NASD also believes that 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, since a similar vendor display provision does not apply to the OTC market, NASD believes that it is more important to require that members display the same priced quotation in multiple markets to preserve transparency in that marketplace.

Further, NASD believes that NASD 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

<sup>3</sup> Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 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. Securities Exchange Act Release No. 47633 (April 10, 2003), 68 FR 19043 (April 17, 2003).

<sup>6</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.