

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.