

(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.

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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

#### 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.*