

Nasdaq also proposes to eliminate ADAP because the market for it as a separate data feed has been extremely limited. Nasdaq represents that the cost of maintaining a separate feed that carries redundant information is substantial, and Nasdaq does not recoup its costs from the few distributors choosing to take only ADAP. Nasdaq also believes that eliminating the ADAP feed will enable Nasdaq to reduce its overall costs, enabling greater opportunities to maintain low prices on all data products. Finally, Nasdaq represents that almost all of the current recipients of ADAP already receive the Prime data feed. Nasdaq believes that the elimination of ADAP feed will result in minimal disruption to the current recipients.

The proposed rule change also corrects certain subsection and footnote designations that were inadvertently duplicated in the adoption of SR-NASD-2003-27 and SR-NASD-2003-111. SR-NASD-2003-27 added new subsections (q)(3) and (q)(4) and new footnotes 3, 4, and 5, although footnotes with such numbers already existed in the then-effective rule. Nasdaq proposes to correct the duplicate footnote issue by eliminating all footnotes and adding the footnote text to the rule text or to the new subsection (q)(6) or (q)(7) as appropriate. SR-NASD-2003-111 inadvertently added a second subsection designated as (q)(4), which is redesignated as (q)(5). Nasdaq also proposes other non-substantive changes to the rule to make it more readable and consistent.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,¹⁰ in general and with section 15A(b)(5)¹¹ and 15A(b)(6)¹² of the Act, in particular, in that the proposal provides 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 association operates or controls, and it benefits investors and market data vendors. Under the proposal, one data feed will be expanded and another will be discontinued, but Nasdaq will not change its prices for either distributors or professional or non-professional subscribers. Nasdaq believes that expanding the Prime data feed to cover

all price levels, rather than just the top five price levels, enhances the transparency of the Nasdaq market for both securities professionals and individual investors. In addition, Nasdaq believes that most market data distributors will have an opportunity to reduce their telecommunications charges and/or the number of feeds they receive.

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. Nasdaq believes that the expansion of the Prime data feed to include all price levels will benefit distributors and subscribers by providing more data at the same price. Nasdaq also believes that this benefit substantially outweighs any potential additional cost to the few distributors receiving only the ADAP feed directly from Nasdaq that may have to increase the bandwidth of their telecommunications lines to receive the new TotalView data feed directly from Nasdaq. Nasdaq represents that the proposed rule change also would not violate any of Nasdaq's contractual obligations.

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, NW., Washington, DC 20549-0609. Comments should be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NASD-2003-162. 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 refer to File No. SR-NASD-2003-162 and should be submitted by January 7, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48894; File No. SR-PCX-2003-42]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. To Amend its Rules Governing the Execution of Complex Orders Involving Options and Single Stock Futures

December 8, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 15, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule

Level 1. Nasdaq is required under current law to offer the preceding three products. In contrast, the ViewSuite products are proprietary and Nasdaq has no legal obligation to offer them.

¹⁰ 15 U.S.C. 78o-3.

¹¹ 15 U.S.C. 78o-3(b)(5).

¹² 15 U.S.C. 78o-3(b)(6).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.