

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55181; File No. SR-NASD-2007-005)

January 26, 2007

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Operate the Alternative Display Facility on a Permanent Basis

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 January 23, 2007, 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 and II below, which Items have been substantially prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD proposes to amend NASD Rule 4100A to operate its Alternative Display Facility (“ADF”) on a permanent basis. The ADF pilot program, as approved by the Commission on July 24, 2002, and extended on April 7, 2003, January 26, 2004, October 21, 2004, July 20, 2005, and April 26, 2006, will expire on January 26, 2007. NASD has requested accelerated approval of the proposed rule change and proposes an operative date of January 27, 2007. The text of the proposed rule change is available at NASD, the Commission’s Public Reference Room, and www.nasd.com.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 had received on the proposed rule change. The text of these statements may be examined at the places specified in Item III 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

On July 24, 2002, the Commission approved SR-NASD-2002-97,³ which authorized NASD to operate the ADF on a pilot basis for nine months. NASD subsequently filed for immediate effectiveness proposed rule changes SR-NASD-2003-067 to extend the pilot until January 26, 2004;⁴ SR-NASD-2004-012 to extend the pilot until October 26, 2004;⁵ SR-NASD-2004-160 to extend the pilot until July 26, 2005;⁶ SR-NASD-2005-092 to extend the pilot until

³ See Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002).

⁴ See Securities Exchange Act Release No. 47663 (April 10, 2003), 68 FR 19043 (April 17, 2003).

⁵ See Securities Exchange Act Release No. 49131 (January 27, 2004), 69 FR 5229 (February 3, 2004).

⁶ See Securities Exchange Act Release No. 50601 (October 28, 2004), 69 FR 64611 (November 5, 2004).

April 26, 2006;⁷ and SR-NASD-2006-050 to extend the pilot until January 26, 2007.⁸ As described in detail in SR-NASD-2005-087, which replaced withdrawn rule filing SR-NASD-2001-090, the ADF is a quotation collection, trade comparison, and trade reporting facility developed by NASD in accordance with the Commission's SuperMontage Approval Order⁹ and in conjunction with Nasdaq's then anticipated registration as a national securities exchange.¹⁰ In addition, since the Commission gave its initial approval to the ADF pilot, NASD has filed several other ADF-related rule change proposals that have been incorporated into the operation and administration of the pilot,¹¹ and accordingly, would now operate on a permanent basis as

⁷ See Securities Exchange Act Release No. 52122 (July 25, 2005), 70 FR 44133 (August 1, 2005).

⁸ See Securities Exchange Act Release No. 53699 (April 21, 2006), 71 FR 25271 (April 28, 2006).

⁹ See Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (SR-NASD-99-53).

¹⁰ See Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001) (File No. 10-131). The Commission conditionally approved the Nasdaq Exchange application on January 13, 2006. See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

¹¹ 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. See Securities Exchange Act Release No. 47331 (February 10, 2003), 68 FR 7635 (February 14, 2003). On January 6, 2004, the Commission granted accelerated approval to SR-NASD-2003-145, a proposal to amend the ADF pilot rules to give jurisdiction to a three-member subcommittee of NASD's Market Regulation Committee to review system outage determinations under NASD Rule 4300A(f) and excused withdrawal denials under NASD Rule 4619A. The rule change proposal became effective contemporaneous with the Commission's approval. See Securities Exchange Act Release No. 49029 (January 6, 2004), 69 FR 2167 (January 14, 2004). On December 4, 2003, NASD filed for immediate effectiveness SR-NASD-2003-181 to amend Rule 4613A(c) to clarify that NASD may suspend quotations in the ADF displayed by any market participant, including an electronic communications network ("ECN"), that are no

well.¹²

NASD believes that the ADF has been operating successfully during the pilot period. The Commission acknowledged this fact when it approved the launch of SuperMontage, stating 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 believes that the ADF has since continued to honor those conditions. Moreover, on September 28, 2006, the Commission approved SR-NASD-2006-91,¹³ which, among other things, amended the ADF rules governing quoting, trade reporting, and clearing applicable to the ADF and extended this

longer reasonably related to the prevailing market. See Securities Exchange Act Release No. 49075 (January 14, 2004), 69 FR 3414 (January 23, 2004). On March 12, 2004, the Commission approved SR-NASD-2003-175, a proposal to repeal Rule 4613A(e)(1), which required a member that displays 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. See Securities Exchange Act Release No. 49413 (March 12, 2004), 69 FR 12882 (March 18, 2004). On August 18, 2004, the Commission approved SR-NASD-2004-002, a proposed rule change to amend NASD Rule 4300A to require an ADF Market Participant to provide advance written notice to NASD's ADF Market Operations before denying electronic access to its ADF quote to any NASD member in the limited circumstances where a broker-dealer fails to pay contractually obligated costs for access to the Market Participant's quotations. See Securities Exchange Act Release No. 50218 (August 18, 2004), 69 FR 52055 (August 24, 2004). On March 10, 2005, the Commission approved SR-NASD-2004-159, a proposed rule change to establish Rule 4400A, which gives NASD authority to receive and review complaints against ADF Market Participants that allege denial of direct or indirect access pursuant to NASD Rule 4300A. See Securities Exchange Act Release No. 51356 (March 10, 2005), 70 FR 12924 (March 16, 2005).

¹² On August 8, 2006, NASD filed SR-NASD-2006-096 as an immediately effective rule change. This rule change amended Rule 4613A and adopted IM-4613A-1 to enable ECN members that post quotations through the ADF to request and receive multiple market participant identifiers. See Securities Exchange Act Release No. 54307 (August 11, 2006), 71 FR 47551 (August 17, 2006). It should be noted that NASD is not requesting that SR-NASD-2006-096 operate on a permanent basis. Rather, NASD is requesting that this remain a pilot and will address this in a separate rule filing.

¹³ See Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006).

functionality to all NMS stocks.¹⁴ Accordingly, NASD believes it is appropriate to approve the operation of ADF on a permanent basis.

NASD proposes that the proposed rule change be operative on January 27, 2007.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁵ which requires, among other things, that NASD rules must 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. NASD believes that approval of the operation of ADF rules on a permanent basis provides an effective mechanism for quoting and trading activities otherwise than on an exchange.

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

Written comments were neither solicited nor received.

¹⁴ In addition, on January 5, 2007, NASD filed SR-NASD-2007-001 for immediate effectiveness. This rule filing amended certain ADF rules to: (1) expand the prohibition on locking and crossing quotations in NMS stocks to include pre-opening and post-closing quotations; (2) extend the obligation to comply with ADF rules to pre-opening quotes; and (3) replace the specific modifiers identified in Rule 4632(A)(a)(4) with a more general reference to modifiers as specified by NASD. See Securities Exchange Act Release No. 55088 (January 11, 2007), 72 FR 2573 (January 19, 2007). While NASD is requesting that the amendments made to ADF rules in both SR-NASD 2006-091 and SR-NASD-2007-001 also become permanent, it should be noted that they will not be implemented until the Regulation NMS Trading Phase Date.

¹⁵ 15 U.S.C. 78o-3(b)(6).

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2007-005 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2007-005. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal

identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-NASD-2007-005 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.¹⁶ Specifically, the Commission believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,¹⁷ which requires that the rules of the self-regulatory organization are 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 believes that the proposal is consistent with Section 15A(b)(11) of the Act¹⁸ in that it is designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

In approving SR-NASD-2006-091, which, among other things, amended the ADF rules to align them with Regulation NMS, the Commission considered and addressed the regulatory issues regarding NASD's operation of the ADF. The Commission believes the instant proposal to make the ADF permanent does not raise any new regulatory issues. For the same reasons stated in its order approving SR-NASD-2006-091, the Commission believes that this proposal is

¹⁶ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78o-3(b)(6).

¹⁸ 15 U.S.C. 78o-3(b)(11).

consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.

NASD has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the Federal Register. The Commission believes that granting accelerated approval of the proposed rule change is appropriate because the proposed rule change does not raise any new regulatory issues. In addition, SR-NASD-2006-091 went through a full notice-and-comment period, and no comments were received. Accelerated approval of this proposal will allow the benefits of the ADF to continue without a lapse in the pilot due to expire on January 26, 2007. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁹ for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register.

¹⁹ 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁰ that the proposed rule change (SR-NASD-2007-005) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Florence E. Harmon
Deputy Secretary

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.30-3(a)(12).