

participate in the marketing fee program.

If a payment-accepting firm were to materially change its execution status or a specialist transfers its options classes to a separate organization, any eligible ROT could request that a vote be held pursuant to procedures set forth above to determine whether those option classes should continue to participate in the marketing fee program.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with section 6(b) of the Act⁸ in general and furthers the objectives of section 6(b)(5) of the Act⁹ in particular in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanisms of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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

The Amex 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

The foregoing rule change has become immediately effective pursuant to section 19(b)(3)(A)(iii)¹⁰ of the Act and Rule 19b-4(f)(6)¹¹ under the Act because it effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Amex has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

The Exchange has requested that the Commission waive the usual pre-operative waiting period, so that it may

immediately begin implementing the proposed procedures in connection with the marketing fee program. The Exchange notes that acceleration of the operative date of the proposed rule is appropriate, given that substantially similar procedures have been adopted by the Chicago Board Options Exchange, Inc. ("CBOE") and approved by the Commission.¹²

The Commission believes that it is consistent with the protection of investors and the public interest to accelerate the operative date of the proposal.¹³ The Commission notes that it has approved a substantially similar proposal filed by the CBOE. For this reason, the Commission designates that the proposal become operative immediately. At any time within sixty days after the filing of the proposed rule change, the Commission may summarily abrogate this rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. 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. Persons making 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 Amex. All submissions should refer to file number SR-Amex-2003-80 and should be submitted by October 28, 2003.

¹² See Securities Exchange Act Release No. 47957 (May 30, 2003), 68 FR 35035 (June 11, 2003) (SR-CBOE-2003-20).

¹³ For purposes of accelerating the operative date of the proposed rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48581; File No. SR-NASD-2003-111]

Self Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1, 2, and 5 Thereto by the National Association of Securities Dealers, Inc., Relating to Charges for ViewSuite Services Set Forth in NASD Rule 7010(q)

October 1, 2003.

On July 17, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-6 thereunder,² a proposed rule change to institute a pilot program for a one-year period to simplify the structure of the fees assessed for the ViewSuite products under NASD Rule 7010(q), by combining the current DepthView, PowerView, and TotalView products into one single entitlement package. On August 11, 2003, Nasdaq filed Amendment No. 1 that entirely replaced the original rule filing.³

The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on August 21, 2003.⁴ The Commission received no comments on the proposal. On September 22, 2003, Nasdaq filed Amendment No. 2 to the proposed rule change.⁵ On September 24, 2003, Nasdaq filed Amendment No.

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-6.

³ See Letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 8, 2003 ("Amendment No. 1").

⁴ See Securities Exchange Act Release No. 48358 (August 15, 2003), 68 FR 50566 (August 21, 2003).

⁵ See Letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated September 17, 2003 ("Amendment No. 2"). In Amendment No. 2, Nasdaq stated that it was changing the starting date of the proposed pilot to October 1, 2003. This is a technical amendment and is not subject to notice and comment.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. Section 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).

3 to the proposed rule change.⁶ On September 26, 2003, Nasdaq filed Amendment No. 4.⁷ On September 29, 2003, Nasdaq filed Amendment No. 5.⁸

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁹ The Commission finds that the proposal is consistent with Section 15A of the Act¹⁰ in general, and with Section 15A(b)(5) of the Act,¹¹ 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 that the NASD operates or controls. The Commission notes that the pilot ViewSuite entitlement program is available to all subscribers of the ViewSuite products. All subscribers would pay a single price for the entitlement package. Thus, for most of ViewSuite's current subscribers, the ViewSuite monthly controlled device fees would be lower than what they are currently paying. The only exception would be for current DepthView professional subscribers, whose fees would increase \$20 per month. The increased monthly fee for DepthView professional subscribers, however, is due to the fact that the new single ViewSuite entitlement includes NQDS data, which cannot be discounted by Nasdaq.¹²

⁶ See Letter from Eleni Constantine, Office of General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated September 24, 2003 ("Amendment No. 3"). In Amendment No. 3, Nasdaq amended the rule text of the proposal to clarify that the starting date of the proposed pilot is October 1, 2003.

⁷ See Letter from Eleni Constantine, Office of General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated September 25, 2003 ("Amendment No. 4"). Nasdaq filed Amendment No. 4 to correct typographical errors made in Amendment No. 3. Amendment No. 4 completely replaced and superseded Amendment No. 3.

⁸ See Letter from Eleni Constantine, Office of General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated September 29, 2003 ("Amendment No. 5"). Nasdaq filed Amendment No. 5 to correct typographical errors made in Amendment No. 4. Amendment No. 5 completely replaced and superseded Amendment Nos. 3 and 4. This is a technical amendment and is not subject to notice and comment.

⁹ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78o-3.

¹¹ 15 U.S.C. 78o-3(b)(5).

¹² Nasdaq has represented that the increase in Depth View pricing reflects the addition of NQDS, which cannot be discounted because it is part of the Nasdaq UTP Plan. See Securities Exchange Act Release No. 48358 (August 15, 2003), 68 FR 50566 (August 21, 2003).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹³ that the proposed rule change (File No. SR-NASD-2003-111), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48576; File No. SR-NASD-2003-142]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend a Pilot Amendment to NASD Rule 7010(s) Regarding Nasdaq PostData and the Associated Fees Assessed

September 30, 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 September 24, 2003, the National Association of Securities Dealers, Inc. ("NASD"), 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 and II below, which Items have been prepared by Nasdaq. Nasdaq filed this proposal pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ 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 extend a pilot amendment to NASD Rule 7010(s) regarding Nasdaq PostData and the associated fees assessed. The purpose of this filing is to extend the pilot through

March 31, 2004. Nasdaq is making no substantive changes to the pilot, other than to extend its operation through March 31, 2004. There is no new proposed rule language.

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

On January 11, 2002, the Commission approved, as a 12-month pilot, the creation of Nasdaq PostData, a voluntary trading data distribution facility, accessible to NASD members, buy-side institutions and market data vendors through the NasdaqTrader.com Web site.⁶ Nasdaq extended that pilot through February 28, 2003,⁷ then through March 31, 2003,⁸ and, finally, through September 30, 2003.⁹ Nasdaq hereby proposes to extend the pilot period for PostData through March 31, 2004.

Background. PostData originally consisted of three reports provided in a single package: (1) Daily Share Volume Report, which provide subscribers with T+1 daily share volume in each Nasdaq security, listing the volume by any NASD member firm that voluntarily permits the dissemination of this information; (2) Daily Issue Data, which contains a summary of the previous day's activity for every Nasdaq issue; and (3) Monthly Summaries, which provide monthly trading volume statistics for the top 50 market participants sorted by industry sector, security, or type of trading (e.g. block or

⁶ See Securities Exchange Act Release No. 45270 (January 11, 2002), 67 FR 2712 (January 18, 2002) (SR-NASD-99-12).

⁷ See Securities Exchange Act Release No. 47210 (January 17, 2003), 68 FR 3912 (January 27, 2003)(SR-NASD-2003-02).

⁸ See Securities Exchange Act Release No. 47503 (March 14, 2003), 68 F.R. 13745 (March 20, 2003)(SR-NASD-2003-35).

⁹ See Securities Exchange Act Release No. 47634 (April 4, 2003), 68 FR 17714 (April 10, 2003)(SR-NASD-2003-60).

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ Nasdaq asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).