

3 to the proposed rule change.<sup>6</sup> On September 26, 2003, Nasdaq filed Amendment No. 4.<sup>7</sup> On September 29, 2003, Nasdaq filed Amendment No. 5.<sup>8</sup>

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.<sup>9</sup> The Commission finds that the proposal is consistent with Section 15A of the Act<sup>10</sup> in general, and with Section 15A(b)(5) of the Act,<sup>11</sup> 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.<sup>12</sup>

<sup>6</sup> 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.

<sup>7</sup> 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 Amendment No. 4 completely replaced and superseded Amendment No. 3.

<sup>8</sup> 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 Amendment No. 5 completely replaced and superseded Amendment Nos. 3 and 4.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.

<sup>9</sup> 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).

<sup>10</sup> 15 U.S.C. 78o-3.

<sup>11</sup> 15 U.S.C. 78o-3(b)(5).

<sup>12</sup> 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,<sup>13</sup> 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.<sup>14</sup>

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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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 Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> 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.<sup>6</sup> Nasdaq extended that pilot through February 28, 2003,<sup>7</sup> then through March 31, 2003,<sup>8</sup> and, finally, through September 30, 2003.<sup>9</sup> 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

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

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

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

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

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> 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).

total). Nasdaq launched PostData on March 18, 2002.

On August 5, 2002, Nasdaq expanded the information made available to PostData subscribers to include four additional reports: Buy Volume Report, Sell Volume Report, Crossed Volume Report, and Consolidated Activity Volume Report.<sup>10</sup> Each report offers information regarding total Nasdaq reported buy (or sell, or cross, or consolidated) volume in the security, as well as rankings of registered market makers based upon various aspects of their activity in Nasdaq. The reports also provide recipients with information about the number and character of each market maker's trades. Finally, the reports provide the information described above with respect to block volume, be it buy, sell, cross or consolidated interest.

*Extension of the Pilot.* The PostData pilot program is scheduled to expire on September 30, 2003. Nasdaq plans to request permanent approval of PostData in the coming months. Additional time is needed, however, to finalize the details of PostData as a permanent product and to fully analyze PostData fees. Nasdaq is therefore requesting an extension of the PostData pilot through March 31, 2004.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(5)<sup>11</sup> and 15A(b)(6)<sup>12</sup> of the Act. Section 15A(b)(5) requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by a national securities association. Section 15A(b)(6) requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq believes that this program involves a reasonable fee assessed only to users and other persons utilizing the system and will provide useful information to all direct and indirect subscribers on a non-discriminatory basis.

### *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.

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

Nasdaq 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**

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>13</sup> and rule 19b-4(f)(6) thereunder.<sup>14</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such 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.

Nasdaq has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes waiving the five-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. Such waivers will allow the pilot to operate without interruption through March 31, 2004. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>15</sup>

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 NASD. All submissions should refer to file number SR-NASD-2003-142 and should be submitted by October 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-48579; File No. SR-NYSE-2003-26]**

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., To Amend an Interpretation of NYSE Rule 345 to Provide for the Elimination of "Registered Representative-In-Charge" as a Category Precluded From Being an Independent Contractor**

October 1, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 3, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by NYSE.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Commission staff made non-substantive changes to the description of the proposed rule change and the format of this Notice with the permission of the Exchange. Telephone conversations between Mary Anne Furlong, Director, Rule and Interpretive Standards, NYSE, and Andrew Shipe, Special Counsel, Division of Market Regulation, Commission, September 12 and 16, 2003.

<sup>10</sup> See Securities Exchange Act Release No. 46316 (August 6, 2002), 67 FR 52504 (August 12, 2002)(SR-NASD-2002-90).

<sup>11</sup> 15 U.S.C. 78o-3(b)(5).

<sup>12</sup> 15 U.S.C. 78o-3(b)(6).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).