

(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 Act¹² and rule 19b-4(f)(6) thereunder.¹³ 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.

The NASD has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the TAF pilot to operate without interruption through June 1, 2003. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹⁴

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-2003-73 and should be submitted by May 15, 2003.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 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).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47688; File No. SR-NASD-2003-52]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish a Fee for Receipt of Mutual Fund Quotation Service Data by Distributors

April 17, 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 March 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, II, and III below, which Items have been prepared by Nasdaq. 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 the Substance of the Proposed Rule Change

Nasdaq proposes to establish a \$1,000 per month distributor fee for receipt of Nasdaq mutual fund information. The fee would be assessed on all distributors, as defined in proposed Rule 7090(e)—*i.e.*, those firms that receive the data and distribute it to third parties. Nasdaq will make the proposed rule change effective immediately upon Commission approval.

The text of the proposed rule change is below. Proposed new language is in *italics*.

Rule 7090. Mutual Fund Distributor Fee

(a)-(d) No change.

(e) *Distributors receiving MFQS shall pay a monthly fee of \$1,000. For the purposes of this subsection only, the term "distributor" shall refer to any firm that receives the MFQS data feed and distributes it to third parties. All such*

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

firms must execute a Nasdaq Distributor Agreement.

* * * * *

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

The Nasdaq Mutual Fund Quotation Service (MFQS) collects daily Net Asset Value information from approximately 18,000 mutual funds. This data is distributed via the Nasdaq Level 1 data feed. Currently, Nasdaq does not charge for the receipt or distribution of mutual fund data.

Nasdaq states that it creates value for distributors and their subscribers by collecting and processing the mutual fund data, producing the data feed, and providing data quality services. The mutual fund data product is an important component of integrated financial information services that are provided by major market data vendors, financial web sites, and online brokerage services. Nasdaq represents that the \$1,000 per month fee will compensate it for these value-added services without discouraging wide distribution of the data.

Nasdaq is not charging recipients of the data feed who do not distribute the data to third parties. Unlike other data feeds which can be used for order routing, the MFQS data is only useful for display purposes. Those firms that only distribute it internally obtain no additional commercial advantage from resale of the data, and accordingly Nasdaq is not charging them. Thus, while the term "distributor" is used elsewhere in the NASD's rules to include a firm that receives a data feed and distributes it internally,³ in

³ See, e.g., Rule 7010(q) footnote 8. Telephone conversation between Eleni Constantine, Office General Counsel, Nasdaq and Gordon Fuller, Counsel to the Assistant Director, Division of Market Regulation, Commission, on April 14, 2003.

proposed Rule 7090(e) Nasdaq is only using the term to refer to firms that distribute the MFQS data to third parties.

The Market Data Distribution Department will identify the firms that distribute the mutual fund data to third parties. These firms will be required to confirm their usage and distribution of the data and execute the appropriate amendment to the Nasdaq Distributor Agreement.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,⁴ in general and with section 15A(b)(5)⁵ 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 NASD operates or controls. The proposed fee will be assessed on all firms that receive the MFQS data and distribute it to third parties, thus gaining a commercial advantage.

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, as amended.

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

Written comments on the proposed rule change 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 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-2003-52 should be submitted by May 15, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47689; File No. SR-NYSE-99-51]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Order Tracking

April 17, 2003.

I. Introduction

On December 27, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to require the recording of details of orders in Exchange listed securities by its members and member organizations. On May 24, 2000, the Exchange filed

Amendment No. 1 to the proposal.³ On August 14, 2001, the Exchange filed Amendment No. 2 to the proposal.⁴ On January 17, 2002, the Exchange filed Amendment No. 3 to the proposal.⁵ The proposed rule change, as amended, was published for comment in the **Federal Register** on January 30, 2002.⁶

On February 28, 2002, the Exchange filed Amendment No. 4 to the proposal.⁷ The proposed rule change, as amended, was again published for comment in the **Federal Register** on March 15, 2002.⁸

The Commission received one comment on the proposal.⁹ This order approves the proposed rule change, as amended.

II. Background

The proposed rule change is intended to fulfill certain of the undertakings contained in the order issued by the Commission relating to the settlement of an enforcement action against the NYSE for failure to enforce compliance with section 11(a) and Rule 11a-1 of the Act and NYSE Rules 90, 95, and 111.¹⁰ The SEC Order found that the NYSE's floor broker regulatory program suffered from two major deficiencies: (1) the NYSE failed to take appropriate action to police for profit-sharing or other performance-based compensation of independent floor brokers; and (2) the NYSE suspended its routine independent floor broker surveillance for extensive periods of time. As part of the SEC Order, the NYSE agreed and was ordered to comply with a variety of undertakings. Among other things, it agreed to, and was ordered to, continue the development and implementation of an electronic floor system ("Phase I

³ See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jennifer Colihan, Attorney, Division of Market Regulation, Commission, dated May 22, 2000 ("Amendment No. 1").

⁴ See Letter from Darla C. Stuckey, Assistant Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated August 14, 2001 ("Amendment No. 2").

⁵ See Letter from Darla C. Stuckey, Assistant Secretary, NYSE to Belinda Blaine, Associate Director, Division, Commission, dated January 17, 2002 ("Amendment No. 3").

⁶ See Securities Exchange Act Release No. 45326 (January 23, 2002), 67 FR 4479.

⁷ See Letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division, Commission, dated February 28, 2002 ("Amendment No. 4").

⁸ See Securities Exchange Act Release No. 45521 (March 8, 2002), 67 FR 11735.

⁹ See Letter from Stuart J. Kaswell, Senior Vice President and General Counsel, Securities Industry Association ("SIA"), to Jonathan Katz, Secretary, Commission, dated April 26, 2002.

¹⁰ See In the Matter of New York Stock Exchange, Inc., SEC Release No. 34-41574, June 29, 1999; Administrative Proceeding File No. 3-9925 ("SEC Order").

⁴ 15 U.S.C. 78o-3

⁵ 15 U.S.C. 78o-3(b)(5).

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.