

Citadel noted that, as a result, there is a risk that orders executed on one exchange as part of the opening rotation could receive a different price if executed as part of the opening rotation on another exchange. Citadel asserted that no "obvious error" is involved and that the proposal is an inappropriate punitive measure because the market maker has not done anything wrong. Citadel also stated that the proposal creates an irrational distinction between those customer orders that get the benefit of the adjustment and those that do not.

The Exchange countered that its obvious error rule currently applies to transactions occurring as part of the opening rotation and provides for the adjustment of market maker to market maker transactions to prices that the market maker may not have been quoting at the opening.¹² The Exchange also noted that its obvious error rule currently provides for differing treatment with respect to obvious errors depending on the nature of the order and the parties involved. According to the Exchange, the proposed rule change is consonant with its obvious error rule, which currently addresses an error at the opening, adjustment of an opening transaction, and differing treatment of customers and market makers.

The Commission believes that the Citadel Letter does not raise any issues that would preclude approval of the proposed rule change. In the Commission's view, the proposed rule change strikes a reasonable balance by affording non-broker-dealer customers the opportunity to seek review of an opening rotation transaction until 3:30 CT on the day of the transaction, if the transaction occurred at a price that satisfies the threshold set forth in the Exchange's obvious error rule, while at the same time limiting the size and amount of any such adjustment.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-CBOE-2005-63), as amended, is approved.

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

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54003; File No. SR-NASD-2006-056]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 To Establish a Package of Real-Time and Near-Real-Time Data Products Called the Market Analytics Data Package

June 16, 2006.

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 April 24, 2006, 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. On June 8, 2006, Nasdaq filed Amendment No. 1. Nasdaq has designated the proposed rule change as constituting a "non-controversial" rule change pursuant to section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Nasdaq proposes to establish a package of real-time and near-real-time data products that provide a new level of transparency to trading activity on Nasdaq trading systems to interested

subscribers on a purely voluntary basis. The text of the proposed rule change is available at NASD, at the Commission, and at <http://www.nasdaq.com/about/RuleFilings/Filings2006.stm>.

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

Nasdaq proposes to establish a package of real-time and near-real-time data products that provide a new level of transparency to trading activity on Nasdaq trading systems to interested subscribers on a purely voluntary basis. The Market Analytics Data Package will consist of one or more of the following products:

Market Velocity—Market Velocity is akin to the audible noise and visible activity that traders use on a physical trading floor to detect changes in market direction, momentum, or liquidity. Nasdaq measures the frequency and size of orders submitted to the trading system, including under certain conditions shares not visible in the quote montage. Market Velocity can be expressed as a number of shares, for example, the current number of shares in market and aggressive limit orders that have arrived in the Nasdaq Market Center execution system. Market Velocity can also be expressed as a ratio of the current number of shares relative to what is expected in each stock for that time of day. Market Velocity may also be expressed as an alert when the underlying data exceeds a threshold.

Market Forces—Market Forces uses the same order and share volume information used in Market Velocity, but categorizes the orders by whether they are buys or sells. Market Forces provides an indication of market direction and is expressed as a number of shares or a percentage of shares in buy versus sell orders. Market Forces may also be expressed as an alert when the underlying data exceeds a threshold.

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19-b4(f)(6). Nasdaq gave the Commission written notice of its intent to file the proposed rule change on March 24, 2006. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on June 8, 2006, the day Nasdaq filed Amendment No. 1.

¹² Telephone conference among Andrew Spiwak, Director, Legal Division, and Chief Enforcement Attorney, Jennifer Lamie, Managing Senior Attorney, and Nancy Sanow, Assistant Director, Division of Market Regulation, Commission on June 13, 2006.

¹³ 15 U.S.C. 78f(b)(2).

Market Velocity and Market Forces use pre-trade order information to signal changes in market liquidity. For example, Market Velocity will signal when there is unusually high or low share volume in limit orders in the Nasdaq Market Center execution system. Unusually high limit order share volume can signal an opportunity to make larger trades. Unusually low share volume can alert traders that large market orders are likely to have a larger than usual price impact. Market Forces complements the Market Velocity alerts by indicating which side of the market has the propensity of the limit order share volume.

Market Velocity and Market Forces may include shares not visible in existing quote and order data feeds. For example, Market Velocity and Market Forces can signal changes in the share volume in orders routed through Nasdaq to other trading centers. Without Market Velocity and Market Forces, immediate or cancel orders that do not find the best price on the Nasdaq book will be routed to other trading centers without any information showing up in existing Nasdaq data feeds. Market Velocity and Market Forces will not include reserve or hidden orders.

Market Velocity and Market Forces are real-time data products that will be distributed over a new real-time data feed.

Competitive VWAP Benchmark—Competitive VWAP (CVWAP) Benchmark is a complement to the Volume Weighted Average Price (VWAP), a benchmark often used by institutional investors to determine whether they received a good price for a large trade. CVWAP Benchmark provides the best and worst average price performance by actual market makers trading on the Nasdaq Market Center execution system. Institutional investors can compare the price they received to the CVWAP Benchmark to determine how their trade compares with a range of actual trader performance. CVWAP Benchmark can also help investors identify stocks where broker selection is very important (those with a wide range between best and worst CVWAP performance).

A CVWAP Benchmark is calculated as follows: (1) A buy-side market participant would like to benchmark the price received for a large purchase of issue ABCD that they sent to their sell-side broker at 10 a.m. and was completed at 2 p.m.; (2) the buy-side participant enters the issue, start time, end time, and minimum dollar volume into a Web site or other query facility; (3) Nasdaq receives the query information and calculates individual

volume weighted average prices for each market maker that bought ABCD between 10 a.m. and 2 p.m. using Nasdaq trading systems; (4) Nasdaq filters out market makers that purchased amounts below the minimum dollar volume chosen (for example, a market maker that bought 100 shares during the time period does not provide a valid benchmark for a large order); (5) Nasdaq ranks the individual buy VWAPs achieved by the market makers that remain and reports the best and worst VWAP prices (but not the identities of the market participants that achieved those prices); (6) the buy-side market participant can then compare the best and worst performance to the price they received from their broker.

CVWAP Benchmark is an intra-day, query-response product that will require vendors to send Nasdaq query parameters and Nasdaq to make calculations and reply with results. Nasdaq will not identify the market participants that achieved the best or worst CVWAP Benchmark for any trade or period of time. The only exception would be if Nasdaq built an opt-in facility for market participants to choose to advertise situations when they achieved the best performance.

CVWAP Leaders—CVWAP Leaders is a periodic market maker leader board that enables institutional investors to identify the firms with the most experience trading a particular stock or type of stock. Unlike ordinary leader boards that rank market makers by traded volume alone, CVWAP Leaders ranks them by share volume weighted by execution quality (the difference between the market participant VWAP and the overall VWAP).

The CVWAP Leader board is calculated as follows: (1) Collect all Nasdaq Market Center execution system trades reported over a period of time, such as five days; (2) divide all trades into buckets of records by issue, side (buying or selling), and half hour; (3) for each bucket, calculate the overall volume weighted average price for all trades and an individual volume weighted average price for each market participant; (4) compare each market participant's individual VWAP to the overall VWAP and allocate each market participant points equal to the difference in pennies between their individual VWAP and the overall VWAP multiplied by the number of shares they transacted during that period; (5) add up all the points earned by each market participant in each issue (across all buckets for that issue); (6) rank market participants within that issue by the number of points earned.

CVWAP Leaders is a delayed list of issues and participants that is calculated from all trades over an extended period of time, such as a week. Detailed trade by trade information is masked by the price weighting that prevents anyone from being able to derive the number of shares traded or prices received by any particular participant. CVWAP Leaders is distributed periodically as a flat file using a standard file transfer protocol.

Proposed Pricing Structure

Nasdaq will offer a limited introductory period of one month during which new Market Analytics subscribers will receive the data for free. After the introductory period, organizations that receive Market Analytics directly or indirectly (through a retransmission vender) will have three options:

(i) *Monthly distributor fee with subscriber fees*: Organizations will, at least, pay a distributor fee of \$2,000/month. They will receive 10 free subscriber licenses. Subsequent subscriber licenses will cost \$1/month for non-professionals and \$10/month for professionals.

(ii) *Monthly Enterprise License*: Organizations may choose to pay an enterprise license of \$4,000/month. The enterprise license will include the distributor fee and unlimited subscriber fees.

(iii) *Annual Enterprise License*: Organizations that choose to sign on to receive the service for at least 12 months will pay an enterprise license of \$36,000/year. The annual enterprise license will include the distributor fee and unlimited subscriber fees.

For the new data products, Nasdaq will not distinguish between direct and indirect distributors or internal and external distributors as it does with its established data products. The decision not to distinguish firm types was made to encourage firms to maximize adoption of the new, unproven data products without consideration for how it is received and to whom it is provided.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with section 15A of the Act,⁵ in general, and furthers the objectives of section 15A(b)(6) of the Act,⁶ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in

⁵ 15 U.S.C. 78o-3.

⁶ 15 U.S.C. 78o-3(b)(6).

general, to protect investors and the public interest.

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 were neither solicited nor received.

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 Act⁷ and Rule 19b4(f)(6) thereunder.⁸

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.

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. 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-2006-056 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-2006-056. 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 the 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 available publicly. All submissions should refer to the File Number SR-NASD-2006-056 and should be submitted on or before July 14, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54002; File No. SR-NASD-2006-072]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. To Modify the Fees for Trading and Compliance Data and the Data Package Available to NASD Member Firms via NasdaqTrader.com

June 16, 2006.

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 June 5, 2006, 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. Pursuant to section 19(b)(3)(A)(ii) of the Act,³ and Rule 19b-4(f)(2) thereunder,⁴ Nasdaq has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing with the Commission. 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 modify the fees for trading and compliance data available to NASD member firms via NasdaqTrader.com, as well as to update the information that the Nasdaq Trading and Compliance Data Package ("Data Package") includes.⁵ Nasdaq will implement the new fees on July 1, 2006.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.⁶

Rule 7010. System Services

(a)-(m) No Change

(n) NasdaqTrader.com Trading and Compliance Data Package Fee

The charge to be paid by an NASD Member Firm for each entitled user receiving Nasdaq Trading and Compliance Data Package via NasdaqTrader.com is *\$130* [\$100] per month (monthly maximum of 25

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ March 31, 2005 was the last day that customers had access to the Daily Share Volume Report. Nasdaq notified customers via email on March 14, 2005, and posted a notice simultaneously on the NasdaqTrader.com Web site, regarding the removal of the Daily Share Volume Report from the Data Package. In addition to having no customer demand for the Daily Share Volume Report, Nasdaq received no complaints nor any customer inquiries before or after its removal from the Data Package. E-mail from Jonathan F. Cayne, Associate General Counsel, Nasdaq, to Joseph Morra, Special Counsel, Commission, dated June 14, 2006. The Commission notes that Nasdaq should have filed a proposed rule change at the time it decided to remove the Daily Share Volume Report from the Data Package.

⁶ Changes are marked to the rule text that appears in the electronic NASD Manual found at <http://www.nasd.com>. Prior to the date when The NASDAQ Stock Market LLC ("NASDAQ LLC") commences operations, NASDAQ LLC will file a conforming change to the rules of NASDAQ LLC approved in Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).