

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

NQLX neither solicited nor received written comment on the proposed rules.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to section 19(b)(7)(B) of the Act,⁹ the proposed rule changes, as filed with the Commission, became effective on December 17, 2002.

Within 60 days of the date of effectiveness of the proposed rules, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rules and require that the proposed rules be refilled in accordance with the provisions of section 19(b)(1) of the Act.¹⁰

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rules conflict with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules that are filed with the Commission, and all written communications relating to the proposed rules 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 these filings will also be available for inspection and copying at the principal office of NQLX. Electronically submitted comments will be posted on the Commission's internet website (<http://www.sec.gov>). All submissions should refer to File No. SR-NQLX-2002-03 and should be submitted by February 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47209; File No. SR-NASD-2003-03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Waive Fees Assessed Under NASD Rule 7010(s) for New Subscribers to Nasdaq PostData

January 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 January 9, 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 Substance of the Proposed Rule Change

Nasdaq proposes to waive for two months for each new subscriber to Nasdaq PostData the fees assessed under NASD rule 7010(s). The text of the proposed rule change is below. Proposed additions are in *italics*; proposed deletions are in *brackets*.

Rule 7010 System Services

(a)-(r) No changes.

(s) NasdaqTrader.com Volume and Issue Data Package Fee.

The charge to be paid by the subscriber for each entitled user receiving the Nasdaq Volume and Issue Data Package via NasdaqTrader.com shall be \$70 per month. The charge to be paid by market data vendors for this information shall be \$35 per month for each end user receiving the information through the data vendor. The availability of this service through NasdaqTrader.com shall be limited to

NASD members, Qualified Institutional Buyers (as defined in Rule 144A of the Securities Act of 1933) and data vendors. The Volume and Issue Data package includes:

- (1) Daily Share Volume reports
- (2) Daily Issue Data
- (3) Monthly Volume Summaries
- (4) Buy Volume Report
- (5) Sell Volume Report
- (6) Crossed Volume Report
- (7) Consolidated Activity Volume Report

All fees assessed under this subsection will be waived for a period of up to two months for all new subscribers and potential new subscribers. This fee waiver period would be applied on a rolling basis, determined by the date on which a new subscriber or potential subscriber contacts Nasdaq to receive access to PostData.

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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.³ PostData was launched on March 18, 2002. Nasdaq hereby proposes to offer PostData to all new subscribers and potential subscribers without charge for up to two months for the duration of the PostData pilot.

Background. PostData originally consisted of three reports provided in a single package: (1) Daily Share Volume Report, which provides subscribers with T+1 daily share volume in each Nasdaq security, listing the volume by any

⁹ 15 U.S.C. 78s(b)(7)(B).

¹⁰ 15 U.S.C. 78s(b)(1).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 45270 (January 11, 2002), 67 FR 2712 (January 18, 2002)(SR-NASD-99-12).

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 total).

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.⁴ 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 maker 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.

Proposed Fee Waiver. In order to increase the availability of PostData within the securities industry, Nasdaq proposes to waive all fees assessed upon new subscribers to PostData for a period of up to two months. Nasdaq has repeatedly been asked by potential subscribers to offer a free trial period in order to test PostData before committing to subscribe. Based upon these requests, Nasdaq believes that offering a free trial period will make this data more widely available and enable PostData to reach viability sooner.

This fee waiver period would be applied on a rolling basis, determined by the date on which a new subscriber or potential subscriber contacts Nasdaq to receive access to PostData. Additionally, any vendor who provides PostData to its clients would have the opportunity to waive the fee to any new subscriber for a period of up to two months. Nasdaq believes that this waiver is fair and non-discriminatory because it applies to all potential direct and indirect subscribers.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(5)⁵ and 15A(b)(6)⁶ of the Act. Section 15A(b)(5)

requires the equitable allocation of reasonable dues, fees and other 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

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 NASD 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-2003-03 and should be submitted by February 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47210; File No. SR-NASD-2003-02]

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

January 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 January 9, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), 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. Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,³ 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.

⁷ 17 CFR 200.30-3(a)(12).

¹ 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 The NASD provided the Commission with notice of its intent to file the proposed rule change on December 30, 2002. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii). Nasdaq asked the Commission waive the 30-day operative delay.

⁴ See Securities Exchange Act Release No. 46316 (August 8, 2002), 67 FR 52505 (August 12, 2002)(SR-NASD-2002-90).

⁵ 15 U.S.C. 78o-3(b)(5).

⁶ 15 U.S.C. 78o-3(b)(6).