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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–2001–24 and should be submitted by February 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1355 Filed 1–17–02; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45271; File No. SR–CHX–2001–17]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by The Chicago Stock Exchange, Incorporated Relating to Eligibility of Limit Orders for Trade Through Protection

January 11, 2002.

On August 6, 2001, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') 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–4 thereunder,[2] a proposed rule change that would amend CHX Article XX, Rule 37(b)(6) to require that a limit order be resident in the specialist's book for a time period of 0–15 seconds (as designated by the specialist) before it would be eligible for trade through protection.

The proposed rule change was published for comment in the **Federal Register** on December 5, 2001.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act[6] in that it designed to promote just and equitable principles of trade, to remove impediments to, and to perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–CHX–2001–17) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1357 Filed 1–17–02; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45115 (November 28, 2001), 66 FR 63269 (December 5, 2001).

[4] 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).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78s(b)(2).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45270; File No. SR–NASD–99–12]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change Establishing a Pilot Program To Establish Fees for a Volume and Issue Data Package Known as Post Data

January 11, 2002.

I. Introduction

On February 18, 1999, 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'' or ''SEC'') 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 amend NASD Rule 7010, System Services, to establish a fee for a Volume and Issue Data Package (''Post Data'') provided through the *Nasdaq Trader.com* Web site. The proposal would establish one fee to be paid by subscribers, and another fee to be paid by market data vendors.

Post Data would provide three separate reports in a single package, consisting of (1) Daily share volume reports for each Nasdaq security; (2) daily issue data containing a summary of the previous day's activity for each Nasdaq issue; and (3) monthly summaries of trading volume statistics for the top 50 market participants broken down by industry sector, security, and type of trading (such as block or total). The proposed rule change will be implemented for a one-year pilot period.

On March 24, 1999, Nasdaq amended the proposal, which amendment replaced and superseded the original proposal.[3] Notice of the proposed rule change, as modified by Amendment No. 1, appeared in the **Federal Register** on April 9, 1999.[4] The Commission received three comment letters on the proposed rule change.[5]

Nasdaq also amended the proposal on May 30, 2001,[6] and again on July 10, 2001.[7] Because Amendment Nos. 2 and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Nasdaq's initial proposal was to provide T+1 daily share volume reports in each Nasdaq security to market data vendors, NASD members, and non-NASD member Qualified Institutional Buyers (''QIBs'') as defined in Rule 144A under the Securities Act of 1933. 17 CFR 230.144A. In Amendment No. 1, Nasdaq revised the proposal to include daily issue summaries of the previous day's activity for every Nasdaq issue, and monthly summaries of trading volume statistics for the top 50 market participants broken down by industry sector, security, and type of trade.

[4] Securities Exchange Act Release No. 41244 (April 1, 1999), 64 FR 17429.

[5] *See* April 30, 1999 letter from Matthew W. Johnson, Managing Director, Lehman Brothers Inc., to Margaret H. McFarland, Deputy Secretary, SEC (''Lehman Letter''); April 12, 1999 letter from Stephen K. Lynner, President, AutEx Group (''AutEX''), to Jonathan G. Katz, Secretary, SEC; and June 23, 1999 letter from Stephen K. Lynner, President, AutEx, to Katherine England, Assistant Director, Division of Market Regulation (''Division''), SEC.

[6] *See* May 29, 2001 letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq. to Katherine A. England, Assistant Director, Division, SEC, and attachments (''Amendment No. 2''). Amendment No. 2 completely replaced and superseded Amendment No. 1, and proposed new fees for Post Data, as well as minor adjustments to the original proposal.

[7] *See* July 9, 2001 letter form Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Belinda Blaine, Associate Director, Division, SEC (''Amendment No. 3''). In Amendment No. 3, Nasdaq clarified that: (1) Amendment No. 2, as further amended by Amendment No. 3, replaces and supersedes the original proposal and Amendment No. 1; (2) the proposal is filed by the NASD, acting through its subsidiary, Nasdaq; (3) the footnote that defines a ''qualified institutional buyer'' should be included in the proposed rule language of NASD Rule 7010(p); and (4) modifications to Post Data during the pilot period will be limited to minor enhancements to the content of the package and will be made in accordance with Section 19(b) of the Act and Rule 19b–4 thereunder. 15 U.S.C. 78s(b)

3 proposed different fees than those proposed in the original filing and Amendment No. 1, notice of the proposed rule change, as amended since it original publication, appeared in the **Federal Register** on July 20, 2001.[8] As amended, the proposal would establish a fee of $70 per month for subscribers for each entitled user receiving the Nasdaq Volume and Issue Data Package, and $35 per month for each end user receiving the information through market data vendors. The Commission received six comment letters on the proposal,[9] one of which was retracted. This order approves the proposed rule change, as amended.

II. Summary of Comments

Four commenters asked the Commission to approve the proposal.[10] These commenters generally expressed support for the proposal because they believe Post Data will be a valuable tool that will allow them to trade more effectively.[11] By providing immediate and reliable trading data, these commenters believe Post Data will allow them to make better-informed decisions.[12] Two commenters also suggested that the proposal might reduce costs.[13] Three of commenters that supported the proposal emphasized the value in having verified information available to market participants.[14]

One commenter asked the Commission not to approve the proposal in its current form. This commenter believes the Commission should establish safeguards to ensure that preexisting commercial trade reporting services are not driven out of the market due to ''a business advantage conferred on Nasdaq by virtue of its status as a regulator.''[15] The commenter suggests that Nasdaq's pricing strategy for Post Data should be scrutinized to ensure that Nasdaq does not subsidize Post Data with revenue Nasdaq derives from performing regulatory functions such as trade reporting fees.[16]

The commenter also asserts that because Nasdaq pays nothing to collect the data used in Post Data, and in fact is paid to collect this data by virtue of the NASDA's status as a self-regulatory organization, Nasdaq should only be able to recover from vendors the costs incurred from passing the data on the vendors.[17]

The commenter further argues that, while proposal states that Nasdaq will make future enhancements to Post Data available to data vendors for redistribution, the proposal is ambiguous as to whether Nasdaq will charge vendors for the enhancements. The commenter believes that charging only the customers who received the enhancements through a private vendor would impose an impermissible burden on competition.[18]

The commenter also requests that Nasdaq affirmatively state that Nasdaq will not impose restrictions on a private vendor's right to redistribute trade data to the vendor's customers, whomever those customers might be.[19] This issue arises from Nasdaq's proposal to make Post Data available to NASD members, QIBs, and the retail customers of participating market data vendors, without defining ''retail customers.'' Nasdaq discusses elsewhere in the proposal the need to restrict access to this data to entities that are likely to have proper staff and resources to comply with security mandates and are unlikely to use the data improperly. Because these two statements in conjunction with each other create an ambiguity for the commenters, the commenter asks the Commission to require Nasdaq to disclose whether or not Nasdaq will impose limitations on vendor redistribution of Post Data's content, and if so, to describe the limitations.

Nasdaq's Response to the Comments.

Nasdaq filed its response to comments with the Commission on September 27, 2001.[20] In Nasdaq's Response letter, Nasdaq asserts that Post Data does not impose an unfair burden on competition. Nasdaq maintains that no regulatory fees will be used to subsidize Post Data. As Nasdaq stated in the proposal, the projected costs of development, enhancement, maintenance, operation, and marketing of Post Data, as well as overhead costs allocable to Post Data, should be covered by the fees assessed to market data vendors. The fees Nasdaq will assess to retail customers should cover costs associated with maintenance and administration of the Nasdaq web security infrastructure used to grant and validate access to Post Data.[21] Because vendors with established data networks will be able to obtain the data directly from Nasdaq, vendors will not incur the cost associated with the Web site. Nasdaq believes vendors therefore will be able to use the price differential to provide a superior product or complete with the price of Nasdaq's product.[22]

While one commenter[23] cited *NASD* v. *SEC*[24] in support of its position that Nasdaq is precluded from charging the fees it has proposed for Post Data, Nasdaq distinguishes the facts and circumstances of the present proposal from that in *NASD* v. *SEC.* Nasdaq notes that its proposal would establish two separate fees (one for market data vendors, and one for Nasdaq's direct subscribers), and the fees are designed to be allocated equitably among product users without subsidy from other Nasdaq revenue streams.[25] Unlike the direct subscribers in *NASD* v. *SEC,* Nasdaq asserts taht market data vendors will pay only for the costs of Post Data attributable to wholesale purchasers. Nasdaq will not require market data vendors to pay for web security costs associated with providing Post Data to Nasdaq's direct subscribers.[26]

Product Enhancements. In Nasdaq's Response letter, Nasdaq clarifies that it will make product enhancements

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and 17 CFR 240.19b–4. Amendment No. 3 also provided further explanation of the basis for the proposed fees.

[8] Securities Exchange Act Release No. 44558 (July 16, 2001), 66 FR 38049.

[9] *See* July 31, 2001 letter from Dennis A. Green, Senior Vice President, Nasdaq Trading, Legg Mason, Inc. (via e-mail) (''Legg Mason letter''); August 2, 2001 letter from Matt Johnson, Head of U.S. Cash Trading, Lehman Brothers (via e-mail) (''Lehman Brothers letter''); August 9, 2001 letter from Stephen K. Lynner, President, Thomson Financial Sales and Trading Group to Jonathan G. Katz, Secretary, SEC (''Thomson Financial letter''); August 9, 2001 letter from Lene Jensen, Regional Manager, Global Data Acquisition, Thomson Financial (via e-mail); August 16, 2001 letter from Lene Jensen, Regional Manager, Global Data Acquisition, Thomson Financial (via e-mail, retracting comments filed in August 9, 2001 letter); August 16, 2001 letter from Mary McDermott-Holland, Chairman, Nasdaq Institutional Traders Council, Franklin Portfolio Associates to Jonathan G. Katz, Secretary, SEC (''NITC letter''); and August 15, 2001 letter from James P. Ryan, Vice President and Senior Counsel, Fund Business Management Group, Capital Research and Management Company, to Jonathan G. Katz, Secretary, SEC (''Capital Research letter'').

[10] Legg Mason letter; Lehman Brothers letter; Capital Research letter; and NITC letter.

[11] Capital Research letter.

[12] NITC letter; and Capital Research letter.

[13] NITC letter; and Legg Mason letter.

[14] NITC letter as 1 (''Post Data represents a tremendous step forward in providing accurate and vital trading information to market participants.''); Capital Research letter (''By providing verified trading information to market participants, Post Data will allow us to make more informed broker selection decisions.''); and Lehman Brothers letter (''The fact that this trade data will be confirmed by ACT reporting will allow customers to have an accurate portrayal of their volume data.'').

[15] Thomson Financial letter at 4.

[16] *Id.*

[17] Thomson Financial letter at 5, citing *NASD* v. *SEC,* 801 F.2d 1415 (D.C. Cir. 1986).

[18] *Id.* at 6.

[19] *Id.* at 7–8

[20] *See* undated letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Belinda Blaine, Associate Director, Division, SEC (''Nasdaq Response letter'').

[21] Nasdaq Response letter at 2.

[22] Nasdaq Response letter at 3.

[23] *See* Thomson Financial letter at 5.

[24] 801 F.2d 1415 (D.C. Cir. 1986).

[25] Nasdaq Response letter at 3.

[26] *Id.*

available to all Post Data users, whether the users are Nasdaq customers or customers of a participating market data vendor. If Nasdaq offers a free product enhancement during the pilot program, Nasdaq will make the enhancement available to all direct and indirect users at no cost, and provide notice to vendors to allow vendors an opportunity to implement programming changes if necessary.[27]

Retail Customers. Nasdaq states unequivocally that it will not limit the ability of private data vendors to redistribute the product to their respective customers. To that end, Nasdaq clarifies that it defines a ''retail'' user as a direct or indirect user—in other words, any user who receives the data, be it from a market data vendor or from Nasdaq.[28]

III. Discussion

After careful review, the Commission finds the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.[29] In particular, the Commission finds that the proposed rule change is consistent with Sections 15A(b)(5) and (6) of the Act.[30]

Section 15A(b)(5) [31] requires the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that a national securities association operates or controls. Section 15A(b)(6) [32] requires that the rules of a national securities association be designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Commission finds that the proposal is consistent with both of these Sections of the Act. Specifically, the Commission has reviewed the comment letters and Nasdaq's response to the comment letters. Nasdaq has stated it will make the Post Data product available to retail subscribers for $70 per month, and to market data vendors for $35 per month for each end user receiving the information through the data vendor. The Commission finds that the fees that Nasdaq proposes to charge for both the retail and the wholesale distribution of Post Data are equitably allocated among members and nonmembers. The differential between the retail and wholesale fees potentially will allow market data vendors the opportunity to sell the data on a retail basis at prices higher than $35 but lower than $70, and remain competitive with Nasdaq's retail price of $70. In addition, Nasdaq has clarified that the wholesale fee does not include the costs associated with the maintenance and security of the retail web-based product.

Furthermore, the Commission believes the information contained in Post Data may help to foster cooperation and coordination with persons engaged in facilitating transactions in securities, by providing consistent, reliable, and verified market data to market participants who choose to subscribe to the service or purchase the information from market data vendors. The Commission believes that investors will benefit by the timely dissemination of this reliable market data.[33] The Commission further finds that the proposal places no undue burden on competition, and in fact, may foster competition, as market data vendors obtain verified data from Post Data, provide enhancements to the data, and in turn, sell the enhanced data to retail customers.[34] Finally, the Commission is satisfied that Nasdaq has fully and properly addressed the questions raised by the commenter regarding product enhancements and the ability of vendors to redistribute the data to their respective customers.

The Commission notes that Post Data will be provided on a one-year pilot basis. The Commission expects that Nasdaq will evaluate the fees it has established for Post Data, and provide the Commission with a report of its findings before the expiration of, or extension of, the one-year pilot program.

While minor modifications to Post Data are anticipated, should Nasdaq wish to modify the contents of Post Data in any substantive way, Nasdaq must do so pursuant to Section 19(b) [35] and Rule 19b–4 [36] thereunder.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[37] that the proposed rule change (SR–NASD–99–12), as amended, be and hereby is approved on a pilot basis through January 10, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1299 Filed 1–17–02; 8:45 am]

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[27] Nasdaq Response letter at 4.

[28] *Id.*

[29] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[30] 15 U.S.C. 78o–3(b)(5) and (6).

[31] 15 U.S.C. 780–3(b)(5).

[32] 15 U.S.C. 78o–3(b)(6).

[33] In this regard, the Commission notes Nasdaq's representation that Nasdaq generally will provide the Post Data information to vendors approximately five minutes before it posts the information on the Web site for direct end-users. This time differential enables the vendor to capture and post the data on its own terminals before Nasdaq's release time.

[34] The Commission notes that this proposal relates to enhanced data that is not integral to the ability of a broker-dealer or customer to trade. *Cf. NASD* v. *SEC,* footnote 17, *supra.*

[35] 15 U.S.C. 78s.

[36] 17 CFR 240.19b–4.

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45266; File No. SR–NASD–2001–88]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Relating to Computer to Computer Interface Fees

January 10, 2002.

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 December 7, 2001, 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. On January 10, 2001, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] 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

The proposed rule change increase the fee assessed on NASD non-members that continue to use the x.25 Computer-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 contains the rule text of the proposed rule filing, as well as represented that all non-members affected by the proposed rule change had been alerted about the filing and that no unlisted trading privilege exchange would be affected by the filing. *See* letter from John Yetter, Assistant General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated January 8, 2002 (''Amendment No. 1'').