

(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 Amex. All submissions should refer to File No. SR-Amex-2002-108 and should be submitted by April 10, 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. 34-47471; File No. SR-CSE-2003-01]

Self-Regulatory Organizations; The Cincinnati Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto To Amend the CSE's Market Data Revenue Sharing Program for Tape B Securities

March 7, 2003.

On January 6, 2003, the Cincinnati Stock Exchange, Inc. ("CSE" 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 to

modify the Exchange's schedule of transaction fees to amend its market data revenue sharing program for Type B securities traded on the Exchange. On January 24, 2003, the CSE amended the proposal.³

The proposed rule change, as amended, was published for comment in the **Federal Register** on February 3, 2003.⁴ The Commission received no comments on the proposal.

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 exchange⁵ and, in particular, the requirements of section 6 of the Act⁶ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with section 6(b)(4) of the Act⁷ because it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange members by crediting members on a pro-rata basis. However, as set forth in its July 2, 2002, Order of Summary Abrogation ("Abrogation Order"),⁸ the Commission will continue to examine the issues surrounding market data fees, the distribution of market data rebates, and the impact of market data revenue sharing programs on both the accuracy of market data and on the regulatory functions of self-regulatory organizations. The decision to allow the CSE to establish the market data revenue sharing program described in this proposed rule change is narrowly drawn, and should not be construed as resolving the issues raised in the Abrogation Order, and does not suggest what, if any, future actions the Commission may take with regard to market data revenue sharing programs.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change, as amended, (SR-

³ See January 23, 2003, letter from Jennifer M. Lamie, Esquire, CSE, to Katherine England, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, the CSE changed the text of the proposed rule to address omissions that were made in the original rule filing.

⁴ See Securities Exchange Act Release No. 47258 (January 27, 2003), 68 FR 5316.

⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

⁸ See Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002) (File Nos. SR-NASD-2002-61, SR-NASD-2002-68, SR-CSE-2002-06, and SR-PCX-2002-37) (Order of Summary Abrogation).

⁹ 15 U.S.C. 78s(b)(2).

CSE-2003-01) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-6658 Filed 3-19-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47503; File No. SR-NASD-2003-35]

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

March 14, 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 7, 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. 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.

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

NASD proposes to reestablish and extend through March 31, 2003, the pilot period for Nasdaq PostData and the associated fees assessed under NASD rule 7010(s). Nasdaq also proposes to make this proposed rule change effective retroactive to March 1, 2003, to avoid a lapse of the previous pilot due to Nasdaq's failure to file for an

¹⁰ 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 Nasdaq asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. 17 CFR 240.19b-4(f)(6).

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

extension before the previous pilot program expired. Nasdaq is making no substantive changes to the pilot program, other than to reestablish and extend its operation through March 31, 2003. The text of the proposed rule change is available at Nasdaq and at the Commission.

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.⁶ On January 17, 2003, Nasdaq extended that pilot through February 28, 2003.⁷ Nasdaq hereby proposes to reestablish the pilot, and extend its operation through March 31, 2003. Nasdaq proposes to make the proposed rule change effective retroactive to March 1, 2003, to avoid a lapse of the previous pilot due to Nasdaq's failure to file for an extension before the pilot expired.

Background. PostData consists 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 total). PostData was launched 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.⁸ 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.

Extension of the Pilot. Nasdaq proposes to extend the PostData pilot through March 31, 2003. The pilot has been effective but adoption was slower than expected. For a variety of reasons, more time was required than originally anticipated to recruit sell-side firms to sign on to PostData to provide the critical mass of data necessary to have a product to sell to those subscribers (buy-side firms or institutional investors) interested in viewing the data. Nasdaq believes that adoption was slow because:

- Volume is attributed to the firm that has the reporting obligation based on ACT rules. This is also the methodology for the monthly share volume reports offered on Nasdaq Web sites (*NasdaqTrader.com* and *NasdaqOnline.com*). Sell-side firms wanted to get credit for volume regardless whether they were the reporting party or not in a trade.

- In the time since PostData was initially developed, the industry has moved to more commission-based or agency (riskless principal) trading. Firms that conduct predominantly more riskless principal trading with other sell-side firms are not well represented in PostData because in riskless principal trading only one leg of the transaction (the transaction with sell-side firm or market maker) is reported in ACT and in many cases these firms are not the reporting party.

- PostData's value and benefits were not well understood by firms, especially with firms' attention directed on other Nasdaq initiatives.

Nasdaq addressed the first two issues by enhancing PostData in August of 2002 to include volume attributed to both parties of a trade (reporting and the contra-party) and identification of the volume as being buy, sell or cross. These additional data sets addressed the issue of which party gets the volume credit and display some volume for firms that primarily engage in "riskless principal" trading. These enhancements resulted in seven additional sell-side firms participating in PostData by the end of August.

Therefore, at this time, Nasdaq is unable to effectively study the fees assessed for PostData, as initially requested in the order approving PostData.⁹ Growth in the PostData subscriber base was initially slower than anticipated. It was not until September 2002 that the number of subscribing firms first exceeded 25. Currently, there are 33 subscribing firms paying for PostData, and of those, most are also firms that post their data. This sample is too small to draw any meaningful conclusions about the price of the product. In addition, there is no data with respect to indirect subscribers because to date there are no vendors purchasing PostData for redistribution to their subscribers.

Nasdaq was able to start marketing PostData to potential subscribers such as buy-side firms and data vendors this past fall. It is from these marketing efforts that additional feedback was received such as whether more data can be provided. Nasdaq believes that these actions will increase the likelihood of attracting a meaningful number of subscribers sooner rather than later. It is difficult to predict when that will occur, but Nasdaq represents that it will update the staff regularly, and it will provide a full analysis of the fees as quickly as possible.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(5)¹⁰ and 15A(b)(6)¹¹ 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

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

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

⁸ See Securities Exchange Act Release No. 46316 (August 6, 2002), 67 FR 52504 (August 12, 2002)(SR-NASD-2002-90).

⁹ See Securities Exchange Act Release No. 45270 (January 11, 2002), 67 FR 2712 (January 18, 2002)(SR-NASD-99-12).

¹⁰ 15 U.S.C. 78o-3(b)(5).

¹¹ 15 U.S.C. 78o-3(b)(6).

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

Written comments were neither solicited nor received 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 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.

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, 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-2003-35 and should be submitted by April 10, 2003.

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. 34-47477; File No. SR-NASD-2003-27]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing Two Enterprise License Pilot Programs Regarding the Fees Assessed Upon Distributors of Nasdaq View Suite Data Products

March 10, 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 3, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc.

considered the proposed rule's impact on efficiency, competition, and capital formation. ¹⁵ U.S.C. 78c(f).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "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 establish two alternative voluntary, nine-month pilot programs regarding the fees assessed for distributors of Nasdaq DepthView, PowerView, and TotalView. These data products, known collectively as the Nasdaq ViewSuite products, provide subscribers with quotation information generated by Nasdaq's SuperMontage quotation and execution system. Proposed new language is in italics; proposed deletions are in brackets.

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Rule 7010. Charges for Services and Equipment.

(a)-(p) No Change

(q) Nasdaq Data Entitlement Packages

(1) No Change

(2) No Change

(3) *Enterprise License Pilot. For a nine-month period commencing on April 1, 2003, each distributor of DepthView, PowerView, and/or TotalView may purchase one or more enterprise licenses that entitle it to distribute the licensed product to its entitled Level 1 or NQDS subscribers³ for a fixed monthly fee based on the formulae set forth in subparagraphs (A)-(F) below. A distributor must purchase an enterprise license(s) within two months following the beginning of this program and must agree by contract to pay the fixed monthly fee for the remaining length of the nine-month period. The distributor must also pay applicable distributor fees set forth in subparagraph (1) or (2) above.*

(A) *DepthView Non-Professional Enterprise License:*

(i) *The DepthView Non-Professional Enterprise License permits a distributor to provide DepthView to all of its entitled Level 1 non-professional subscribers.*

(ii) *The formula for the DepthView Non-Professional Enterprise License fee is 0.25 × number of entitled Level 1 non-*

³ The Enterprise License Pilot does not apply to the Level 1 and NQDS data services. All distributors continue to be obligated to report and pay for all entitled Level 1 and NQDS subscribers throughout the pilot period.

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