

to periodically assess the quality of competing markets to assure that order flow is directed to the markets providing the most beneficial terms for their customer orders.³⁶ Broker-dealers must examine their procedures for seeking to obtain best execution in light of market and technology changes and modify those practices if necessary to enable their customers to obtain the best reasonably available prices.³⁷ In doing so, broker-dealers must take into account price improvement opportunities, and whether different markets may be more suitable for different types of orders or particular securities.³⁸

The Commission notes that the proposed rule change would be implemented on a pilot basis for six weeks. During this time, the Commission intends to evaluate the impact of the proposal on the options markets to determine whether it would be beneficial to customers and to the options markets as a whole before approving any request to extend the pilot program. The Commission believes that the proposed rule change's six-week pilot period will allow the Commission an opportunity of solicit comments on the proposed rule change prior to considering whether the approve such pilot program for an extended period. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,³⁹ to approve the proposal, as amended, on an accelerated basis.

For these reasons, the Commission believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act,⁴⁰ and will not jeopardize market integrity or the incentive for market participants to post competitive quotes.⁴¹

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁴² that the proposed rule change (SR-ISE-2005-18), as amended, which institutes the pilot program until July 22, 2005, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴³

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51814; File No. SR-NASD-2004-185]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To Establish a Unitary Fee Schedule for Distribution of Real Time Data Feed Products Containing Nasdaq Market Center Data

June 9, 2005.

I. Introduction

On December 14, 2004, 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"), 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 establish a unitary fee schedule for distribution of real time data feed products containing Nasdaq market center data. On February 17, 2005, Nasdaq filed Amendment No. 1 to the original filing.³ Nasdaq filed

⁴⁰ 15 U.S.C. 78f(b)(5).

⁴¹ Approval of this proposal is in no way an endorsement of payment for order flow by the Commission.

⁴² 15 U.S.C. 78s(b)(2).

⁴³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced and superseded the original proposed rule change in its entirety.

Amendment No. 2 on April 14, 2005.⁴ The proposed rule change, as amended, was published for comment in the **Federal Register** on April 28, 2005.⁵ The Commission received one comment on the proposed rule change.⁶ This order approves the proposed rule change, as amended.

II. Description of the Proposal

Nasdaq proposes to modify NASD Rule 7010 to establish a unitary fee schedule for the distribution of Nasdaq Market Center real time data feed products. Nasdaq offers various data products that firms may purchase and redistribute either within their own organizations or to outside parties. According to Nasdaq, "distributor fees" are designed to encourage broad distribution of the data, and allow Nasdaq to recover what it describes as the relatively high fixed costs associated with supporting connectivity and contractual relationships with distributors. Nasdaq believes that because the data products and associated fees were established over many years, the method of calculating such fees should be updated. Accordingly, Nasdaq proposes to establish a revised monthly distributor pricing structure for its real time data feed products that it believes will allocate equitably data fees across the customer base of data distributors and consumers of Nasdaq market data.

Specifically, the proposed rule change will establish a distributor fee pricing structure for four real time data feed products: TotalView, OpenView, Mutual Fund Quotation Service ("MFQS"), and Real Time Index. The proposed fees will be assessed to distributors of these real time data feed products, defined in the proposed rule change to include any entity that receives a feed or data file of Nasdaq data directly from Nasdaq or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside the entity). The new distributor fees would not apply to Nasdaq's Web-based historical data products, which are governed by NASD Rule 7010(p), and they would not apply to data feeds that are produced pursuant to the national market system plan governing Nasdaq stocks ("Nasdaq UTP Plan"). The proposed distributor pricing is also distinct from any per display device or

⁴ Amendment No. 2 replaced and superseded the original proposed rule change, as amended.

⁵ See Securities Exchange Act Release No. 51598 (Apr. 21, 2005), 70 FR 22162.

⁶ See letter from Gene L. Finn to Jonathan Katz, Secretary, Securities and Exchange Commission dated May 17, 2005 ("Finn Letter").

³⁶ Order Handling Rules Release, 61 FR at 48322-48333 ("In conducting the requisite evaluation of its internal order handling procedures, a broker-dealer must regularly and rigorously examine execution quality likely to be obtained from different markets or market makers trading a security."). See also *Newton*, 135 F.3d at 271; Market 2000; An Examination of Current Equity Market Developments V-4 (SEC Division of Market Regulation January 1994) ("Without specific instructions from a customer, however, a broker-dealer should periodically assess the quality of competing markets to ensure that its order flow is directed to markets providing the most advantageous terms for the customer's order."); Payment for Order Flow Final Rules, 59 FR at 55009.

³⁷ Order Handling Rules, 61 FR at 48323.

³⁸ Order Handling Rules, 61 FR at 48323. For example, in connection with orders that are to be executed at a market opening price, "[b]roker-dealers are subject to a best execution duty in executing customer orders at the opening, and should take into account the alternative methods in determining how to obtain best execution for their customer orders." Disclosure of order Execution and Routing Practices, Securities Exchange Act Release No. 43590 (November 17, 2000), 65 FR 75414, 75422 (December 1, 2000) (adopting new Rules 11Ac1-5 and 11Ac1-6 under the Act and noting that alternative methods offered by some Nasdaq market centers for pre-open orders included the mid-point of the spread or at the bid or offer).

³⁹ 15 U.S.C. 78s(b)(2).

per user population fees for data products such as TotalView.

The proposed pricing structure is comprised of two components for each Nasdaq real time data feed product: (1) A monthly Direct Access Fee, and (2) either a monthly Internal Distribution Fee or a monthly External Distribution Fee. The Direct Access Fee will apply to any organization that receives a real time data product directly from Nasdaq via a data feed. Distributors receiving Nasdaq real time data indirectly (*i.e.*, via re-transmission from another entity) will not be liable for the Direct Access Fee. Nasdaq represents that this fee will allow it to recover the fixed costs of establishing and maintaining relationships with direct access distributors.

The Internal Distribution Fee will apply to any organization that receives a real time data feed product (either directly from Nasdaq or through a vendor) and distributes the data solely within its own organization. The External Distribution Fee will apply to any organization that receives a real time data feed product (either directly from Nasdaq or through a vendor) and distributes the data outside its own organization. Nasdaq states that the External Distribution Fee is higher than the Internal Distribution Fee because external distributors typically have broader distribution of the data than internal distributors. An organization that receives real time data directly from Nasdaq will pay the Direct Access Fee plus the higher of either the Internal Distribution or External Distribution Fee but not both. An organization that only receives a real time data feed indirectly and distributes it within its organization will pay the Internal Distribution Fee; an organization that receives data indirectly and distributes it outside its organization will pay the External Distribution Fee; and an organization that receives a real time data feed indirectly and distributes it both internally and externally will pay the External Distribution Fee.

Under the proposed pricing structure, Nasdaq real time data feed products that are available for distribution will be divided into two categories: "Issuer Specific Data" and "Market Summary Statistics." Issuer Specific Data will further be divided into a "Dynamic Intraday" subcategory and a "Daily" subcategory. Market Summary Statistics, at present, will have one subcategory: "Intraday." Each subcategory of real time data feed product will be assigned a Direct Access Fee, Internal Distribution Fee, and External Distribution Fee.

The change will effect distributor fees for the aforementioned products as follows: Currently, the monthly distribution fee for Nasdaq TotalView (set forth at Rule 7010(q)) is based on whether the data distributor receives the TotalView data in an aggregate or detailed form. The current monthly fee for TotalView data in aggregate form is \$1,000 per distributor and in detailed form is \$7,500 per distributor. There is no current monthly distributor fee for OpenView. Under the proposed fee structure, TotalView and OpenView, whether in aggregate or detailed form, will fall into the "Issue Specific Data—Dynamic Intraday" subcategory, for which the proposed monthly fees are \$2,500 for Direct Access, \$1,000 for Internal Distribution, and \$2,500 for External Distribution.⁷ Organizations that currently purchase detailed TotalView information, particularly internal distributors and non-direct connection recipients, will pay less in the future; organizations that currently purchase aggregate TotalView data, particularly those that access the data directly, will pay higher fees.

The current monthly fee for distribution of the MFQS is \$1,000 for each external distributor. Under the proposed fee structure, MFQS data will fall into the "Issue Specific Data—Daily" subcategory, for which the proposed monthly fees are \$500 for Direct Access, \$500 for External Distribution, and no charge for Internal Distribution. The proposed pricing will benefit external distributors that do not take their data directly from Nasdaq. Organizations that take their data directly from Nasdaq but only distribute it internally will pay the Direct Access Fee.

Under the current monthly fee structure set forth in NASD Rule 7030, the fee for Real-Time Index data is \$2,000 for external distributors. Under the proposed fee structure, Real-Time Index data will be labeled as "Market Summary Statistics—Intraday." The proposed monthly fees for Market Summary Statistics will involve a Direct Access fee of \$500, an Internal Distribution Fee of \$50, and an External Distribution fee of \$1,500. The proposed pricing will decrease the costs of non-direct connection external distributors,

⁷ Nasdaq believes that because OpenView provides the same depth and scope of information for exchange-listed securities as TotalView does for Nasdaq-listed securities, and entails similar costs, it is appropriate to put into place the same distribution fee structure for OpenView at this time. Telephone conversation between Bill O'Brien, Senior Vice President, Market Data Distribution, Nasdaq, and Ira Brandriss, Assistant Director, Division of Market Regulation, Commission, April 21, 2005.

but increase them for organizations that distribute the data internally.

Nasdaq is also proposing a more flexible policy for distributor reporting of, and payment for, market data usage. NASD Rule 7060 currently provides that such reporting be based on a pro-rated accounting of the specific installation and termination dates for service. Because some data distributors prefer to report data usage on a "full-month" basis, Nasdaq will offer its market data distributors the option of reporting and paying based on either a pro-rated or full-month basis. The selection of pro-rated or full-month reporting will be the business decision of each market data distributor based on its needs and the needs of its customers.

III. Discussion and Commission Findings

After careful review of the proposal and consideration of the comment letter, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.⁸ In particular, the Commission believes that the proposed rule change, as amended, is consistent with section 15A(b)(5) of the Act,⁹ which requires that the rules of a national securities association provide 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 association operates or controls. Specifically, the Commission believes that the proposed pricing structure is reasonable and notes that it would apply across-the-board to distributors of the aforementioned Nasdaq real time data feed products. In approving the proposed rule change, the Commission notes that, pursuant to Section 19(b)(1) of the Act¹⁰ and Rule 19b-4 thereunder,¹¹ Nasdaq will be required to file with the Commission proposed rule changes relating to any additional Nasdaq real time data feed products to which it plans to apply the new pricing structure in the future.

The Commission received one comment letter on the proposal.¹² Referring to "Section 7030—Special Options" of the NASD Marketplace Rules, the commenter stated that the proposed rule change continues to apply a discriminatory access fee to nonprofessional online investors. The

⁸ The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78o-3(b)(5).

¹⁰ 15 U.S.C. 78s(b)(1).

¹¹ 17 CFR 240.19b-4.

¹² See Finn Letter, *supra* note 6.

commenter also set forth a series of reasons why he believes generally that nonprofessional access fees for online investors should be eliminated, noting that he has enumerated these reasons in comment letters to the Commission in the past. The Commission notes that the continuance of fees for the data products included in NASD Rule 7030 is not the subject of the proposed rule change, although a different pricing structure for the fees charged to distributors for the Nasdaq Market Index, which is being moved from NASD Rule 7030 to Rule 7010, is being proposed. With respect to the commenter's more general concerns about nonprofessional access fees for online investors, the Commission notes that it has recently solicited public comment as part of a comprehensive review it has undertaken regarding market data fees and revenues,¹³ and the commenter's views will be taken into account in that review.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-NASD-2004-185), as amended, is approved.

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

J. Lynn Taylor,

Assistant Secretary.

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SELECTIVE SERVICE SYSTEM

Forms Submitted to the Office of Management and Budget for Extension of Clearance

AGENCY: Selective Service System.

ACTION: Notice.

The following forms have been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

SSS Form No. and Title:

- SSS Form 152, Alternative Service Employment Agreement
- SSS Form 153, Employer Data Sheet
- SSS Form 156, Skills Questionnaire
- SSS Form 157, Alternative Service Job Data Form

¹³ See Securities Exchange Act Release No. 50700 (Nov. 18, 2004), 69 FR 71256 (Dec. 8, 2004). See also Securities Exchange Act Release No. 50699 (Nov. 18, 2004), 69 FR 71126 (Dec. 8, 2004).

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).

SSS Form 160, Request for Overseas Job Assignment
SSS Form 163, Employment Verification Form
SSS Form 164, Alternative Service Worker Travel Reimbursement Request
SSS Form 166, Claim for Reimbursement for Emergency Medical Care

Copies of the above identified forms can be obtained upon written request to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia, 22209-2425.

No changes have been made to the above identified forms. OMB clearance is limited to requesting a three-year extension of the current expiration dates.

Written comments should be sent within 60 days after the publication of this notice, to: Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia, 22209-2425.

A copy of the comments should be sent to Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20435.

Dated: June 1, 2005.

William A. Chatfield,

Director.

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-03-14455]

Pipeline Safety: Public Meeting on Applying, Interpreting, and Evaluating Data From In-Line Inspection Devices

AGENCY: Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: Notice; public meeting.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration's Office of Pipeline Safety (OPS) is hosting a public meeting to discuss concerns it has with how operators are applying, interpreting, and evaluating data acquired from In-Line Inspection Devices (ILI), and OPS's expectations about how operators should be effectively integrating this data with other information about the operator's pipeline. The meeting will be held Thursday, August 11, 2005, in Houston, TX, and is open to all interested parties.

DATES: The public meeting will be held Thursday, August 11, 2005, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held in Houston, TX. The meeting location has not been determined yet and will be made available on <http://ops.dot.gov> shortly.

FOR FURTHER INFORMATION CONTACT: Joy Kadnar (PHMSA/OPS) at 202-366-0568; joy.kadnar@dot.gov, regarding the subject matter of this notice. For information regarding meeting logistics, please contact Veronica Garrison at (202) 366-4996; veronica.garrison@dot.gov or Janice Morgan at (202) 366-2392; janice.morgan@dot.gov.

SUPPLEMENTARY INFORMATION:

Subsequent to information acquired from integrity management program inspections and problems discovered during accident investigations, OPS has become concerned with performance issues associated with in-line inspection devices and how the data from these devices is being integrated with other information on the pipeline system. So that OPS can share these concerns in a public forum, OPS invites public participation in a meeting to be held Thursday, August 11, 2005, to discuss the characterization—discrimination, interpretation, and evaluation—of data acquired from ILI devices.

ILI technology has been used for approximately 20 years and has become the preferred method used by pipeline operators to ensure the integrity of their pipeline assets. However, as demonstrated by recent accidents on hazardous liquid and natural gas pipeline systems, some pipelines that were inspected by ILI devices continue to fail.

OPS will share its findings from these accidents and from recent Integrity Management Program (IMP) inspections. OPS needs to determine if the problem resides in the technology or in the secondary and tertiary stages of the ILI data evaluation—data characterization, validation, and mitigation. Specifically, is the problem data analysis, peer review of technicians involved in data review, lack of common standards for data review, detection thresholds, data validation, or the understanding of each tool's strengths and weaknesses? A secondary objective of this meeting is for OPS to understand how the government, pipeline operators, standards organizations, and ILI vendors can help improve pipeline assessment using ILI technology. At this public meeting, OPS will highlight effective practices and use this medium to share these practices with the public.