

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 self-regulatory organization 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 forgoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submissions, 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 will also be available for inspection and copying at the MSRB's principal offices. All submissions should refer to File No. SR-MSRB-2002-14 and should be submitted by May 6, 2003.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47635; File No. SR-NASD-2003-63]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Modify the Transaction Credit Program for Exchange-Listed Securities

April 4, 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 31, 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 ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On April 3, 2003, Nasdaq submitted Amendment No. 1 to the proposed rule change.³ The NASD filed the proposed rule change pursuant to section 19(b)(3)(A)(ii) of the Act⁴ and Rule 19b-4(f)(2) thereunder,⁵ which renders the proposed rule change effective upon filing with the Commission.⁶ 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 is filing with the Commission a proposed rule change to NASD Rule 7010(c)(2). The proposed rule change responds to the decision of the Consolidated Tape Association to change the way participants in the CT/CQ Plans are charged for the capacity expense attributable to each participant. Nasdaq proposes to amend NASD Rule 7010(c) in order to maintain the same distribution of transaction credits that

exists today for InterMarket trading. Nasdaq will make the rule change effective upon the distribution of revenue for the first quarter of 2003.⁷

The text of the proposed rule change, as amended, is below. Proposed new language is *italicized*.

* * * * *

7010. System Services

(a)-(b) No change.

(c) (1) No change.

(2) Exchange-Listed Securities Transaction Credit

NASD members that trade securities listed on the NYSE ("Tape A") and Amex ("Tape B") in over-the-counter transactions may receive from the NASD transaction credits based on the number of transactions attributed to them. A transaction is attributed to a member if (i) the transaction is executed through CAES or ITS and the member acts as liquidity provider (*i.e.*, the member sells in response to a buy order or buys in response to a sell order) or (ii) the transaction is not executed through CAES or ITS and the member is identified as the executing party in a trade report submitted to the NASD that the NASD submits to the Consolidated Tape Association. An NASD member may earn credits from one or both pools maintained by the NASD, each pool representing 50% of the revenue paid by the Consolidated Tape Association to the NASD for each of Tape A and Tape B transactions *after deducting the amount that the NASD pays to the Consolidated Tape Association for capacity usage*. An NASD member may earn credits from the pools according to the member's pro rata share of all over-the-counter transactions attributed to NASD members in each of Tape A and Tape B for each calendar quarter.

(d)-(s) No change.

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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.

⁷ Nasdaq expects that the Consolidated Tape Association will distribute revenue in the first week of May 2003.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Jeffrey S. Davis, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission dated April 2, 2003 ("Amendment No. 1). In Amendment No. 1, Nasdaq made technical corrections to the proposed rule change.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

⁶ For purposes of determining the effective date of the filing and calculating the 60-day abrogation date, the Commission considers the period to commence on April 3, 2003, the date Nasdaq filed Amendment No. 1.

¹⁰ 17 CFR 200.30-3(a)(12).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's InterMarket is a quotation, communication, and execution venue that allows NASD members to quote and trade stocks listed on the New York Stock Exchange, Inc. ("NYSE") and the American Stock Exchange LLC ("Amex"). The InterMarket competes with regional exchanges like the Chicago Stock Exchange, Inc., the Boston Stock Exchange, Inc., and the Cincinnati Stock Exchange, Inc. for retail order flow in stocks listed on the NYSE and the Amex. Through the InterMarket, Nasdaq operates the Computer Assisted Execution System ("CAES"), a system that facilitates the execution of trades in listed securities between NASD members that participate in InterMarket, and the InterMarket Trading System ("ITS"), a national market plan system that permits trades between NASD members and specialists on the floors of national securities exchanges that trade listed securities.⁸

Nasdaq proposes to modify the InterMarket Transaction Credit Program (the "Program"). Under the Program, Nasdaq shares a portion of the tape revenues that it receives (through the NASD) from the Consolidated Tape Association ("CTA"), by providing a transaction credit to members who engage in over the counter ("OTC") trading activity in CTA-eligible securities. Nasdaq calculates two separate pools of revenue from which credits can be earned: one representing 50% of the revenues received from the CTA for providing trade reports in NYSE-listed securities executed in the InterMarket for dissemination by the CTA, the other representing 50% of the revenue received from the CTA for reporting Amex trades.

On November 22, 2002, the CTA met and unanimously approved a modification to its capacity planning and payment process. As a result of this modification, Nasdaq and other CTA participants will incur CTA expenses based on predicted capacity rather than on an ex-post basis. Further, participants will be billed this cost directly as opposed to CTA deducting all operating costs from the Consolidated Tape ("CT") and Consolidated Quotation ("CQ") revenues collected. This is a change from the prior CTA practice of

deducting operational system costs directly from the CT and CQ gross income available for distribution prior to the disbursement of transaction credits to plan participants.

Nasdaq proposes to amend its transaction credit formula in order to adjust to this CTA billing change. Specifically, prior to Nasdaq distributing 50% of data revenues it receives from CTA, Nasdaq will deduct the capacity expense allocated to Nasdaq by the CTA. Nasdaq will allocate this capacity expense to Tape A and Tape B according to each tape's percentage of total trades executed on Nasdaq.⁹ Deducting the capacity expense prior to distributing tape revenue effectively preserves the current arrangements, whereby Nasdaq and its InterMarket members share these capacity costs.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the Act, including section 15A(b)(5) of the Act,¹⁰ which requires that the rules of the NASD provide for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq represents that the proposed rule change, as amended, will maintain the current cost of conducting business through InterMarket for members that provide liquidity through ITS or CAES. Nasdaq believes that continuing to encourage members to provide liquidity will enhance the efficiency of InterMarket and benefit investors whose trades are routed to InterMarket by increasing the likelihood that they will be promptly executed.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, 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.

⁹ For example, if Nasdaq incurs \$100,000 in capacity expenses, and its members execute 700 transactions in Tape A securities and 300 transactions in Tape B securities, Nasdaq will allocate \$70,000 of capacity expense to Tape A and \$30,000 to Tape B.

¹⁰ 15 U.S.C. 78o-3(b)(5).

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

The forgoing rule change has become effective on April 3, 2003, upon filing of Amendment No. 1 to the proposed rule change pursuant to section 19(b)(3)(A)(ii) of the Act¹¹ and subparagraph (f)(2) of Rule 19b-4 thereunder¹² in that it establishes or changes a due, fee, or other charge imposed by the Nasdaq. At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change, as amended, 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.¹³

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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, as amended, 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 NASD. All submissions should refer to the File No. SR-NASD-2003-63 and should be submitted by May 6, 2003.

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

Margaret H. McFarland,
Deputy Secretary.

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¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(2).

¹³ For purposes of determining the effective date of the filing and calculating the 60-day abrogation date, the Commission considers the period to commence on April 3, 2003, the date Nasdaq filed Amendment No. 1.

¹⁴ 17 CFR 200.30-3(a)(12).

⁸ See CAES/ITS User Guide, p. 5, at www.intermarket.nasdaqtrader.com.