

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Securities Exchange Act of 1934. Persons making written submissions should file six copies thereof with Jonathan G. Katz, 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 filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-99-09 and should be submitted by June 1, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>2</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99-8797 Filed 4-8-99; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41244; File No. SR-NASD-99-12]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Establishment of a Pilot Program To Provide Daily Share Volume Reports via NasdaqTrader.com

April 1, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 18, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, 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 the self-regulatory

organization. On March 24, 1999, Nasdaq filed Amendment No. 1 which replaces and supersedes the initial proposal.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change as contained in Amendment No. 1 from interested persons.

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

Nasdaq is filing a proposed rule change to amend NASD Rule 7010 to establish a fee for the Volume and Issue Data Package provided through the NasdaqTrader.com web site. The text of the proposed rule change is provided below in italics.

##### *(p) 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 \$75 per month. The charge to be paid by market data vendors for this information shall be \$50 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 and data vendors. The Volume and Issue Data Package includes:*

*(1) Daily share Volume reports.*  
*(2) Daily Issue Data.*  
*(3) Month Volume Summaries.*

\* \* \* \* \*

#### 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

<sup>3</sup> On February 18, 1999, Nasdaq submitted its initial proposal to provide only 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. After discussions with at least one market data vendor, and internal discussions at Nasdaq, Nasdaq filed Amendment No. 1 on March 24, 1999. The revised proposal will provide the same information in Nasdaq's original proposal to market data vendors, NASD members, and non-NASD member QIBs, as well as 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, or type of trade.

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

Nasdaq proposes to establish a fee for a voluntary trading data distribution facility, accessible to NASD members, buy-side institutions (i.e., Qualified Institutional Buyers ("QIBs"))<sup>4</sup> and market data vendors through its "NasdaqTrader.com" web site. Under the proposal, subscribers to this service as well as retail customers of participating market data vendors, will be able to obtain the Volume and Issue Data Package, proposed to be named Nasdaq Post Data<sup>SM</sup>.

Post Data<sup>SM</sup> will consist of three separate reports that will be provided as a single package. The first item will be the Daily Share Volume Report, to be named Nasdaq Volume Post<sup>SM</sup>, which will provide subscribers with access to T+1 daily share volume in each Nasdaq security, listing the volume by each NASD member firm that reports volume in the security and has voluntarily chosen to permit the dissemination of this information. The daily share volume will be verified for accuracy by Nasdaq's Automated Confirmation Transaction Service ("ACT"). The second item, the Daily Issue Data report, will contain a summary of the previous day's activity for every Nasdaq issue. The third item, Monthly Summaries, will provide monthly trading volume statistics for the top 50 market participants broken down by industry sector, security, or type of trading (e.g., block or total).

Post Data<sup>SM</sup> will be made available in two ways through the NasdaqTrader.com web site. The information will be provided to market data vendors to be redistributed to their retail customers for which the data vendor will pay a \$50 per month fee to Nasdaq for each end user obtaining this information. The information will also be provided directly to subscribers, limited to NASD members and non-NASD member QIBs, for a fee of \$75 per month. Fees from system subscribers and vendor users will be used to offset the costs associated with the ongoing enhancement, maintenance and marketing of the NasdaqTrader.com web site. The fee paid by direct system subscriber will be used to offset the

<sup>4</sup> For purposes of this service, Nasdaq will rely on the definition of "Qualified Institutional Buyer" found in Rule 144A under the Securities Act of 1933. 17 CFR 230.144A.

<sup>2</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

cost associated with the ongoing maintenance and administration of the Nasdaq web security infrastructure.

This proposal is a direct response to requests from professional Nasdaq market participants to increase the availability of Nasdaq-verified trading data through NasdaqTrader.com. Sell-side traders use share volume to display their trading activity in specific Nasdaq issues while buy-side representatives use similar data to determine which sell-side firm to select for execution of their orders. Post Data<sup>SM</sup> will provide a secure, controlled mechanism to allow these parties to view such data and make informed choices regarding their trading partners.

Modifications to Post Data<sup>SM</sup> during the pilot period will be limited to minor enhancements to the content of the package.<sup>5</sup> Any such modifications will be provided at no additional cost to the subscribers, and would be available to data vendors for redistribution.

Nasdaq recognizes the proprietary and confidential nature of the data contained in Post Data<sup>SM</sup>. As such, Nasdaq has established a secure information display and retrieval environment through the combined use of User IDs, passwords and digital certificates. To further protect NASD member firms' proprietary data, the service is designed so that the information will only be made available to the member firm itself, unless that member determines voluntarily to submit the information to be included in the Nasdaq Volume Post<sup>SM</sup> Report for dissemination to other subscribers or vendors.

Concerns for data protection, and the system security requirements needed to encourage greater disclosure of proprietary trading statistics, also shaped Nasdaq's determination to make Post Data<sup>SM</sup> available only to NASD member firms, market data vendors, and QIBs.<sup>6</sup> It is Nasdaq's belief that these groups represent the largest number of market participants who may benefit from the availability of the voluntarily disclosed, Nasdaq-verified trading volumes. At the same time, these participants are also the most likely to possess the requisite staff and resources to comply with the system security mandates. Moreover, the QIBs consist of entities registered with various

regulatory bodies, which Nasdaq believes provides an additional layer of protection against the improper use of its members' proprietary trading data. Finally, the definition of QIB on which Nasdaq seeks to rely has already been adopted by the Commission as a standard delineating the characteristics of institutional market participants.

Given the commercial uncertainties associated with the launching of any new data product, Nasdaq will be establishing this new service as a 12 month pilot program, beginning from the date of Commission approval, to evaluate user interest. At the end of the 12 month pilot, Nasdaq will evaluate the program and make a determination to either terminate the program, continue the program for an additional 12 month pilot, or continue the program as a permanent feature of NasdaqTrader.com.

Nasdaq believes that the proposed rule change is consistent with the provisions of Sections 15A(b)(5)<sup>7</sup> and 15A(b)(6)<sup>8</sup> 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 that the rules of the association be designed to 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, 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.

#### **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 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 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-99-12 and should be submitted by April 30, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority:<sup>9</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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#### **DEPARTMENT OF STATE**

[Public Notice No. 3019]

#### **Office of Defense Trade Controls; Notifications to the Congress of Proposed Export Licenses**

AGENCY: Department of State.

ACTION: Notice.

**SUMMARY:** Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed

<sup>5</sup> Nasdaq has represented to the Commission that changes to the content of the package will be limited to stylistic, non-substantive changes. Telephone conversation between Scott W. Anderson, Attorney, Office of the General Counsel, Nasdaq, and Joseph P. Morra, Attorney, Division of Market Regulation, Commission, on March 30, 1999.

<sup>6</sup> See *supra* note 4.

<sup>7</sup> 15 U.S.C. 78o-3(b)(5).

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

<sup>9</sup> 17 CFR 200.30-3(a)(12).