

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

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

[FR Doc. 01-18170 Filed 7-19-01; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44558; File No. SR-NASD-99-12]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2 and 3 by the National Association of Securities Dealers, Inc. To Establish a Pilot Program To Provide Daily Share Volume Reports via NasdaqTrader.com

July 16, 2001.

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 subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On March 24, 1999, Nasdaq amended the proposal.<sup>3</sup> The original proposal and Amendment No. 1 were published in the **Federal Register** on April 9, 1999 for notice and comment.<sup>4</sup> On May 30, 2001, the NASD again amended the proposal, which amendment completely replaces and supersedes the original filing and Amendment No. 1.<sup>5</sup> On July 10, 2001,

Nasdaq again amended the proposal.<sup>6</sup> 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 proposes to amend NASD Rule 7010, Systems Services, 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 below. Proposed new language is in italics.

Rule 7010 System Services

(a)-(o) No changes.

(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 \$70 per month. The charge to be paid by market data vendors for this information shall be \$35 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) *Monthly Volume Summaries*

\*For purposes of this service, see definition of "Qualified Institutional Buyer" found in Rule 144A of the Securities Act of 1933.

\* \* \* \* \*

### 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

Nasdaq proposes to establish a fee for a voluntary trading data distribution facility, accessible to NASD members, buy-side institutions (Qualified Institutional Buyers ("QIBs"))<sup>7</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 name "Nasdaq Post Data" ("Post Data").

Post Data 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," 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 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 \$35 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 \$70 per month.

Nasdaq filed this proposal in direct response to requests from professional Nasdaq market participants to increase the availability of Nasdaq-verified

<sup>7</sup> For purposes of this service, Nasdaq will rely on the definition of "Qualified Institutional Buyer" found in Rule 144A of the Securities Act of 1933. 17 CFR 230.144A.

<sup>21</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.

<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 an amendment on March 24, 1999 ("Amendment No. 1"). Amendment No. 1 completely replaced and superseded the original proposal.

<sup>4</sup> Securities Exchange Act Release No. 41244 (April 1, 1999), 64 FR 17429.

<sup>5</sup> See May 29, 2001 letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), SEC and attachments ("Amendment No. 2"). Amendment No. 2 completely replaced and superseded Amendment No. 1. In Amendment No. 2, Nasdaq proposed new fees.

<sup>6</sup> See July 9, 2001 letter from 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: (1) Clarified that Amendment No. 2, as further amended by Amendment No. 3, should replace and supersede entirely the original proposal and Amendment No. 1; (2) clarified that the proposal is filed by the Association through its subsidiary, Nasdaq; (3) clarified that the asterisked footnote at the bottom of pages three and nine of Amendment No. 2 that defines "Qualified Institutional Buyer" should be included in the proposed rule language of Section 7010(p); (4) clarified that modifications to Nasdaq Post Data during the pilot period will be limited to minor enhancements to the content of the package made in accordance with Section 19(b) of the Act and Rule 19b-4 thereunder; and (5) provided an explanation of the rationale underlying the choice of the fees for Nasdaq Post Data.

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 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 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<sup>8</sup> and Rule 19b-4 thereunder.<sup>9</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. 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 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 available only to NASD member firms, market data vendors, and QIBs. 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 defined in Rule 144A consist of entities registered with various regulatory bodies, which registration Nasdaq believes provides an additional layer of protection against the improper use of its members' proprietary trading data. Finally, the Rule 144A QIB definition upon 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 establish this 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 terminate the program, continue the program for an additional 12-month pilot, or continue the program as a permanent feature of NasdaqTrader.com.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of sections 15A9(b)(5) and (6) of the Act.<sup>10</sup> 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 not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq believes that the proposed fees represent an equitable allocation of reasonable fees among members and other users of the Nasdaq facilities associated with the offering of the Post Data product. Nasdaq established the fees in question based upon its consideration of numerous factors, including but not limited to: (1) The costs associated with the development, ongoing enhancement, maintenance, operation, and marketing of the Post Data product; (2) the cost associated with the ongoing maintenance and administration of the Nasdaq web security infrastructure that will be used to grant and validate access to the Post Data product; (3) reasonable overhead costs allocable to the Post Data product; and (4) projected subscriptions, usage, and revenues associated with the Post Data product during its initial period of availability. Nasdaq employed standard formulae to perform these projections, although such projections are inherently speculative.

In addition, Nasdaq believes that the proposed fees 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. Nasdaq will make the Post Data product available to vendors on a wholesale basis for \$35 per end user, and will charge \$70 per direct user, who will access the product through the Nasdaq Trader web site.

This fee differential reflects the projected cost of the incremental web security that is required to entitle direct users of the Post Data product. This fee structure also permits wholesale buyers to re-sell the Nasdaq product for up to a 100% premium before adding any value of any kind to the product. In other words, a vendor could purchase Post Data from Nasdaq for \$35, and then re-sell it to end users without modification for \$65 and still under-price Nasdaq vis a vis those end users. Nasdaq believes that this pricing structure, which Nasdaq will make available to all customers on a non-discriminatory basis, will stimulate, rather than stifle, competition.

## 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, as amended.

## 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** 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 NASD consents, the Commission will:

A. By order approve 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 date, views and arguments concerning the foregoing, including whether the proposed rule change is constituent 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

<sup>8</sup> 15 U.S.C. 78s.

<sup>9</sup> 17 CFR 240.19b-4.

<sup>10</sup> 15 U.S.C. 78o-3(b)(5) and (6).

proposed rule change between the Communication 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 Nasdaq. All submissions should refer to file number SR-NASD-99-12 and should be submitted by August 10, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority:<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-18171 Filed 7-19-01; 8:45 am]

**BILLING CODE 8010-01-M**

## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3354]

#### State of Virginia

As a result of the President's major disaster declaration on July 12, 2001, I find that Tazewell County in the State of Virginia constitutes a disaster area due to damages caused by Severe Storms and Flooding occurring on July 8 through 10, 2001. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 10, 2001 and for economic injury until the close of business on April 12, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303-1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties in Virginia may be filed until the specified date at the above location: Bland, Buchanan, Russell and Smyth; and McDowell and Mercer counties in the State of West Virginia.

The interest rates are:

	In percent
For physical damage	
Homeowners with credit available elsewhere .....	6.625
Homeowners without credit available elsewhere .....	3.312
Businesses with credit available elsewhere .....	8.000
Businesses and non-profit organizations without credit available elsewhere .....	4.000

	In percent
Others (including non-profit organizations) with credit available elsewhere .....	7.125
For economic injury	
Businesses and small agricultural cooperatives without credit available elsewhere .....	4.000

The number assigned to this disaster for physical damage is 335406. For economic injury the number is 9M1700 for Virginia and 9M1800 for West Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 13, 2001.

**James E. Rivera,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 01-18180 Filed 7-19-01; 8:45 am]

**BILLING CODE 8025-01-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Finance Docket No. 33877]**

#### Illinois Central Railroad Company—Construction and Operation—In East Baton Rouge Parish, LA

**AGENCY:** Surface Transportation Board, Transportation.

**ACTION:** Notice of availability of environmental assessment and request for comments.

**SUMMARY:** The Illinois Central Railroad Company (IC) has petitioned the Surface Transportation Board (Board) for authority to construct and operate a rail line approximately 3.2 miles in length in East Baton Rouge Parish, Louisiana, to serve ExxonMobil Chemical Company's Baton Rouge Polyolefins plant. The Board's Section of Environmental Analysis (SEA) has prepared an environmental assessment (EA) for this project. Based on the information provided and the environmental analysis conducted to date, the EA preliminarily concludes that this proposal should not significantly affect the quality of the human environment if the recommended mitigation measures set forth in the EA are implemented. Accordingly, SEA recommends that, if the Board approves this project, IC be required to implement the mitigation set forth in the EA. Copies of the EA have been served on all interested parties and will be made available to additional parties upon request. SEA will consider all comments received when making its

final environmental recommendations to the Board. The Board will then consider SEA's final recommendations and the complete environmental record in making its final decision in this proceeding.

**DATES:** The EA is available for public review and comment. Comments are due by August 20, 2001.

**ADDRESSES:** Comments (an original and 10 copies) regarding this EA should be submitted in writing to: Section of Environmental Analysis, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423, to the attention of Dana White.

**FOR FURTHER INFORMATION CONTACT:** Dana White, (202) 565-1552 (TDD for the hearing impaired 1-800-877-8339). To obtain a copy of the EA, contact Da-To-Da Office Solutions, Room 405, 1925 K Street, NW., Washington, DC 20006, phone (202) 293-7776 or visit the Board's website at [www.stb.dot.gov](http://www.stb.dot.gov).

By the Board, Victoria J. Rutson, Acting Chief, Section of Environmental Analysis.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 01-18182 Filed 7-19-01; 8:45 am]

**BILLING CODE 4915-00-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 34063]**

#### Dallas Area Rapid Transit—Acquisition Exemption—Lines of Union Pacific Railroad Company

Dallas Area Rapid Transit (DART), a political subdivision of the State of Texas, a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire (by purchase) pursuant to an agreement entered into with Union Pacific Railroad Company (UP), as indicated in its notice, approximately 60.78 miles of rail line in Collin, Dallas, Denton, Grayson and Rockwall Counties, TX, as follows: (1) The segment of the Denton Subdivision between approximately milepost K-741.3 (Frankford Road) in Carrollton and approximately milepost K-729.5 in Lake Dallas (approximately 11.8 miles); (2) the segment of the Sherman Subdivision between approximately milepost 285.1 (Spring Creek Parkway) in Plano and approximately milepost 324.7 at South Sherman Junction (approximately 39.6 miles); (3) the Rowlett Extension between approximately milepost 745.5 (near Kirby Road) in Rowlett and approximately milepost 741.3 in Rockwall (approximately 4.2 miles); (4)

<sup>11</sup> 17 CFR 200.30-3(a)(12).