

**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.<sup>10</sup>

**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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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.<sup>3</sup> The NASD filed the proposed rule change pursuant to section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</sup> which renders the proposed rule change effective upon filing with the Commission.<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 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.<sup>7</sup>

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.

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

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

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

<sup>3</sup> 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.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

<sup>6</sup> 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.

<sup>10</sup> 17 CFR 200.30-3(a)(12).