

participate in the marketing fee program.

If a payment-accepting firm were to materially change its execution status or a specialist transfers its options classes to a separate organization, any eligible ROT could request that a vote be held pursuant to procedures set forth above to determine whether those option classes should continue to participate in the marketing fee program.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with section 6(b) of the Act⁸ in general and furthers the objectives of section 6(b)(5) of the Act⁹ in particular in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanisms of a free and open market.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Amex neither solicited nor received written comments with respect to the proposed rule change.

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

The foregoing rule change has become immediately effective pursuant to section 19(b)(3)(A)(iii)¹⁰ of the Act and Rule 19b-4(f)(6)¹¹ under the Act because it effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Amex has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

The Exchange has requested that the Commission waive the usual pre-operative waiting period, so that it may

immediately begin implementing the proposed procedures in connection with the marketing fee program. The Exchange notes that acceleration of the operative date of the proposed rule is appropriate, given that substantially similar procedures have been adopted by the Chicago Board Options Exchange, Inc. ("CBOE") and approved by the Commission.¹²

The Commission believes that it is consistent with the protection of investors and the public interest to accelerate the operative date of the proposal.¹³ The Commission notes that it has approved a substantially similar proposal filed by the CBOE. For this reason, the Commission designates that the proposal become operative immediately. At any time within sixty days after the filing of the proposed rule change, the Commission may summarily abrogate this rule change 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.

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 Amex. All submissions should refer to file number SR-Amex-2003-80 and should be submitted by October 28, 2003.

¹² See Securities Exchange Act Release No. 47957 (May 30, 2003), 68 FR 35035 (June 11, 2003) (SR-CBOE-2003-20).

¹³ For purposes of accelerating the operative date of the proposed rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48581; File No. SR-NASD-2003-111]

Self Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1, 2, and 5 Thereto by the National Association of Securities Dealers, Inc., Relating to Charges for ViewSuite Services Set Forth in NASD Rule 7010(q)

October 1, 2003.

On July 17, 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 ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-6 thereunder,² a proposed rule change to institute a pilot program for a one-year period to simplify the structure of the fees assessed for the ViewSuite products under NASD Rule 7010(q), by combining the current DepthView, PowerView, and TotalView products into one single entitlement package. On August 11, 2003, Nasdaq filed Amendment No. 1 that entirely replaced the original rule filing.³

The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on August 21, 2003.⁴ The Commission received no comments on the proposal. On September 22, 2003, Nasdaq filed Amendment No. 2 to the proposed rule change.⁵ On September 24, 2003, Nasdaq filed Amendment No.

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-6.

³ See Letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 8, 2003 ("Amendment No. 1").

⁴ See Securities Exchange Act Release No. 48358 (August 15, 2003), 68 FR 50566 (August 21, 2003).

⁵ See Letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated September 17, 2003 ("Amendment No. 2"). In Amendment No. 2, Nasdaq stated that it was changing the starting date of the proposed pilot to October 1, 2003. This is a technical amendment and is not subject to notice and comment.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. Section 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).