

3 to the proposed rule change.<sup>6</sup> On September 26, 2003, Nasdaq filed Amendment No. 4.<sup>7</sup> On September 29, 2003, Nasdaq filed Amendment No. 5.<sup>8</sup>

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>9</sup> The Commission finds that the proposal is consistent with Section 15A of the Act<sup>10</sup> in general, and with Section 15A(b)(5) of the Act,<sup>11</sup> in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that the NASD operates or controls. The Commission notes that the pilot ViewSuite entitlement program is available to all subscribers of the ViewSuite products. All subscribers would pay a single price for the entitlement package. Thus, for most of ViewSuite's current subscribers, the ViewSuite monthly controlled device fees would be lower than what they are currently paying. The only exception would be for current DepthView professional subscribers, whose fees would increase \$20 per month. The increased monthly fee for DepthView professional subscribers, however, is due to the fact that the new single ViewSuite entitlement includes NQDS data, which cannot be discounted by Nasdaq.<sup>12</sup>

<sup>6</sup> See Letter from Eleni Constantine, Office of General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated September 24, 2003 ("Amendment No. 3"). In Amendment No. 3, Nasdaq amended the rule text of the proposal to clarify that the starting date of the proposed pilot is October 1, 2003.

<sup>7</sup> See Letter from Eleni Constantine, Office of General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated September 25, 2003 ("Amendment No. 4"). Nasdaq filed Amendment No. 4 to correct typographical errors made in Amendment No. 3. Amendment No. 4 completely replaced and superseded Amendment No. 3.

<sup>8</sup> See Letter from Eleni Constantine, Office of General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated September 29, 2003 ("Amendment No. 5"). Nasdaq filed Amendment No. 5 to correct typographical errors made in Amendment No. 4. Amendment No. 5 completely replaced and superseded Amendment Nos. 3 and 4. This is a technical amendment and is not subject to notice and comment.

<sup>9</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78o-3.

<sup>11</sup> 15 U.S.C. 78o-3(b)(5).

<sup>12</sup> Nasdaq has represented that the increase in Depth View pricing reflects the addition of NQDS, which cannot be discounted because it is part of the Nasdaq UTP Plan. See Securities Exchange Act Release No. 48358 (August 15, 2003), 68 FR 50566 (August 21, 2003).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (File No. SR-NASD-2003-111), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Margaret H. McFarland,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48576; File No. SR-NASD-2003-142]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend a Pilot Amendment to NASD Rule 7010(s) Regarding Nasdaq PostData and the Associated Fees Assessed

September 30, 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 September 24, 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") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed this proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Nasdaq proposes to extend a pilot amendment to NASD Rule 7010(s) regarding Nasdaq PostData and the associated fees assessed. The purpose of this filing is to extend the pilot through

March 31, 2004. Nasdaq is making no substantive changes to the pilot, other than to extend its operation through March 31, 2004. There is no new proposed rule language.

#### 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

On January 11, 2002, the Commission approved, as a 12-month pilot, the creation of Nasdaq PostData, a voluntary trading data distribution facility, accessible to NASD members, buy-side institutions and market data vendors through the NasdaqTrader.com Web site.<sup>6</sup> Nasdaq extended that pilot through February 28, 2003,<sup>7</sup> then through March 31, 2003,<sup>8</sup> and, finally, through September 30, 2003.<sup>9</sup> Nasdaq hereby proposes to extend the pilot period for PostData through March 31, 2004.

**Background.** PostData originally consisted of three reports provided in a single package: (1) Daily Share Volume Report, which provide subscribers with T+1 daily share volume in each Nasdaq security, listing the volume by any NASD member firm that voluntarily permits the dissemination of this information; (2) Daily Issue Data, which contains a summary of the previous day's activity for every Nasdaq issue; and (3) Monthly Summaries, which provide monthly trading volume statistics for the top 50 market participants sorted by industry sector, security, or type of trading (e.g. block or

<sup>6</sup> See Securities Exchange Act Release No. 45270 (January 11, 2002), 67 FR 2712 (January 18, 2002) (SR-NASD-99-12).

<sup>7</sup> See Securities Exchange Act Release No. 47210 (January 17, 2003), 68 FR 3912 (January 27, 2003) (SR-NASD-2003-02).

<sup>8</sup> See Securities Exchange Act Release No. 47503 (March 14, 2003), 68 F.R. 13745 (March 20, 2003) (SR-NASD-2003-35).

<sup>9</sup> See Securities Exchange Act Release No. 47634 (April 4, 2003), 68 FR 17714 (April 10, 2003) (SR-NASD-2003-60).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</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> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> Nasdaq asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).