

total). Nasdaq launched PostData on March 18, 2002.

On August 5, 2002, Nasdaq expanded the information made available to PostData subscribers to include four additional reports: Buy Volume Report, Sell Volume Report, Crossed Volume Report, and Consolidated Activity Volume Report.¹⁰ Each report offers information regarding total Nasdaq reported buy (or sell, or cross, or consolidated) volume in the security, as well as rankings of registered market makers based upon various aspects of their activity in Nasdaq. The reports also provide recipients with information about the number and character of each market maker's trades. Finally, the reports provide the information described above with respect to block volume, be it buy, sell, cross or consolidated interest.

Extension of the Pilot. The PostData pilot program is scheduled to expire on September 30, 2003. Nasdaq plans to request permanent approval of PostData in the coming months. Additional time is needed, however, to finalize the details of PostData as a permanent product and to fully analyze PostData fees. Nasdaq is therefore requesting an extension of the PostData pilot through March 31, 2004.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(5)¹¹ and 15A(b)(6)¹² 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 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 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 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

Nasdaq 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

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act¹³ and rule 19b-4(f)(6) thereunder.¹⁴ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such 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.

Nasdaq has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes waiving the five-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. Such waivers will allow the pilot to operate without interruption through March 31, 2004. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹⁵

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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-2003-142 and should be submitted by October 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48579; File No. SR-NYSE-2003-26]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., To Amend an Interpretation of NYSE Rule 345 to Provide for the Elimination of "Registered Representative-In-Charge" as a Category Precluded From Being an Independent Contractor

October 1, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 3, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), 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 NYSE.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Commission staff made non-substantive changes to the description of the proposed rule change and the format of this Notice with the permission of the Exchange. Telephone conversations between Mary Anne Furlong, Director, Rule and Interpretive Standards, NYSE, and Andrew Shipe, Special Counsel, Division of Market Regulation, Commission, September 12 and 16, 2003.

¹⁰ See Securities Exchange Act Release No. 46316 (August 6, 2002), 67 FR 52504 (August 12, 2002)(SR-NASD-2002-90).

¹¹ 15 U.S.C. 78o-3(b)(5).

¹² 15 U.S.C. 78o-3(b)(6).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

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