

Following the Merger, the board of directors of "new" Bay State will consist of ten members, of whom three will be officers of NIPSCO, three will be officers of "old" Bay State, and four will be current outside directors of "old" Bay State. The current officers of "old" Bay State will continue to serve in similar capacities in "new" Bay State. The Merger Agreement also provides that NIPSCO shall nominate and recommend for election to the NIPSCO board of director one "new" Bay State directors to be mutually determined by NIPSCO and Bay State. "New" Bay State will continue to maintain its principal executive offices in Westborough, Massachusetts.

Applicant states that, upon consummation of the Merger, NIPSCO will own an integrated gas utility system comprised of its gas distribution system in Indiana and Bay State's gas distribution system in Massachusetts, Maine and New Hampshire, as well as an integrated electric utility system in Indiana.<sup>14</sup>

Applicant also states that the Merger is expected to produce various benefits to the public, investors and consumers and will satisfy all of the applicable standards under section 10 of the Act. Among other things, applicant states that, following the Merger, the combined companies will be better positioned to take advantage of operating economies and efficiencies through, among other measures, joint management optimization of their respective portfolios of gas supply, transportation and storage assets. Applicant also notes that the Merger is expected to provide benefits in the form of greater flexibility and capacity in financing the operations of the combining companies and an enhanced ability to take advantage of future

State. Barr Devlin subsequently delivered a "fairness" opinion to the Bay State board of directors to the effect that, based on certain assumptions stated therein, the consideration offered in connection with the Transaction is fair, from a financial point of view, to the holders of Bay State Shares. Applicant notes that a *pro forma* analysis prepared by Barr Devlin indicates that the Transaction would result in accretion to Bay State's shareholders in terms of earnings per share and that NIPSCO's shareholders would also realize accretion in earnings per share (assuming NIPSCO's shares continue to trade at current levels).

<sup>14</sup> Post-merger, the NIPSCO System will provide gas distribution service to approximately 1,036,400 residential, commercial and industrial customers in a 14,152-square mile area in four states, as well as electric service to approximately 416,300 customers, all in Indiana. On a *pro forma* basis, the combined net utility plant (gas and electric) of NIPSCO and Bay State as of December 31, 1997 would have totaled approximately \$3.61 billion and combined gross utility revenues for the twelve months then ended would have totaled approximately \$2.3 billion.

strategic opportunities in the competitive marketplace for energy and energy services that is rapidly evolving in New England.

Applicant contends that, after the Merger, NIPSCO will remain predominantly an intrastate (i.e., Indiana) holding company that will not derive any material part of its income from any out-of-state utility subsidiary and has requested an order under section 3(a)(1) declaring NIPSCO, after consummation of the Merger, to be exempt from all sections of the Act except section 9(a)(2).

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40035; File No. SR-NASD-98-25]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Fees for Nasdaq Market Data Distributors or Vendors

May 27, 1998.

On May 14, 1998,<sup>1</sup> the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>2</sup> and Rule 19b-4 thereunder.<sup>3</sup> The proposed rule change is described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>1</sup> The NASD initially submitted this proposal on March 16, 1998. However, a substantive amendment was requested to clarify the applicability of the proposed fee. The NASD filed Amendment No. 1 on April 28, 1998. See letter from Thomas P. Moran, Senior Attorney, Office of General Counsel, The Nasdaq Stock Market, Inc., to Mignon McLemore, Esq., Division of Market Regulation, SEC, dated April 28, 1998.

On May 14, 1998, the Board filed another substantive amendment modifying the proposed rule language. See letter from Thomas P. Moran, Senior Attorney, Office of General Counsel, The Nasdaq Stock Market, Inc., to Katherine A. England, Division of Market Regulation, SEC, dated May 14, 1998 ("Amendment No. 2").

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 17 CFR 240.19b-4.

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

Nasdaq is proposing to amend NASD Rule 7010 to establish an annual, scaled administrative fee, payable by Nasdaq market data distributors or vendors, for data usage monitoring costs and other administrative expenses incurred by Nasdaq. Once effective, Nasdaq will suspend indefinitely is current contractual requirement that Nasdaq real-time data distributors or vendors provide an annual accountant-certified list of its subscribers who receive Nasdaq data. Below is the text of the proposed rule change. Proposed new language is italicized.

7010. System Services

(a)-(n) No change

(o) *Market Data Distributor or Vendor Annual Administrative Fee*

*Nasdaq Market Data Distributors or Vendors shall be assessed the following annual administrative fee:*

<i>Delayed distributor</i> .....	\$250.00
<i>0-999 real-time terminals</i> .....	\$500.00
<i>1,000-4,999 real-time terminals</i> .....	\$1,250.00
<i>5,000-9,999 real-time terminals</i> .....	\$2,250.00
<i>10,000 + real-time terminals</i> .....	\$3,750.00
* * * * *	

### II. Self-Regulatory Organizations 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

Nasdaq is proposing to establish an annual, scaled fee for the Nasdaq real-time market data distributors or vendors to cover the expenses Nasdaq incurs to administer and monitor market data usage. Currently, Nasdaq real-time market data distributors or vendors are annually required to submit a list, certified by a public accountant paid for by the distributor or vendor, of all subscribers receiving real-time Nasdaq data. Alternatively, a Nasdaq real-time market data distributor or vendor may elect to pay a generally lower fee and have its service usage verified by an on-

site review ("OSR") conducted by Nasdaq staff. The purpose of both the accountant certification and the OSR is to provide Nasdaq with independent confirmation of Nasdaq data consumption. Nasdaq proposes to eliminate the certified-list requirement and OSR alternative, and thus their attendant costs, and replace them with the annual scaled administrative fees proposed in this filing.<sup>4</sup> Nasdaq will retain the right to demand a certified usage report, paid for by the distributor or vendor, in cases involving discrepancies in distributor or vendor reporting.<sup>5</sup>

Nasdaq believes that a scaled, annual administrative fee will more closely align data usage monitoring costs with Nasdaq expenditures. In addition, the new structure, will allow Nasdaq staff to directly and uniformly apply its expertise in data usage monitoring as well as provide a more efficient means of fee collection than its current practices. Moreover, a scaled fee based on the scope of a distributor or vendor's dissemination of Nasdaq data will also permit those data distributors or vendors to estimate their costs more effectively. Once the proposed administrative fee is approved, Nasdaq will suspend indefinitely its costly and burdensome annual certification requirement and instead use the new administrative fee revenue to conduct Nasdaq-initiated OSRs, manage distributor applications, monitor vendor services, and perform other compliance activities.

Finally, Nasdaq notes that its proposed fee structure is priced at levels similar to its current OSR fees which, being consistently less expensive than the cost of obtaining an independent verification of data usage from a certified public accountant, are used by the majority of Nasdaq realtime market data distributors or vendors. As such Nasdaq believes its proposal will not result in a material increase in overall

<sup>4</sup> Distributors using per-quote and usage based reporting will have their monitoring fees determined by having their monthly payment totals divided by the professional subscriber fee rate, resulting in a terminal equivalent. For example, a distributor or vendor that is being charged \$1,000 a month for its per-quote usage of Nasdaq Level 1 Service will have that \$1,000 fee divided by the existing \$20 monthly Level 1 per-terminal fee which results in a terminal equivalent of 50 with an annual monitoring fee of \$500.

For 1998 billing purposes only, Nasdaq will not impose these administrative fees on any firm that incurs costs and submits a certified usage report in 1998 prior to the effective date of Nasdaq's new fee schedule. See Amendment No 2, *supra* note 1.

<sup>5</sup> Similarly, the submission of an unrequested, accountant-certified usage list will not preclude Nasdaq from conducting its own OSR nor will it exempt a distributor or vendor from payment of the administrative fee.

monitoring fee burdens on most Nasdaq data distributors or vendors.<sup>6</sup>

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act which requires that the rules of the NASD provide for the equitable allocations of reasonable, dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

#### *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 purpose of the Act.

#### *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 publication of this notice in the **Federal 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 NASD 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 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. Copies of the submission, all subsequent

<sup>6</sup> Nasdaq notes that it does not currently require delayed distributors to meet audit requirements or pay an OSR fee. Nasdaq believes that the imposition of new minimal charges on delayed distributors is justified to reimburse Nasdaq for the cost of application processing and product monitoring. Nasdaq also advises that those vendors who receive both delayed and real-time data, will not be billed separately for each type of data but will only pay for the highest level of service received. This practice will continue for Nasdaq's proposed administrative fees as well. See Amendment No. 1, *supra* note 1.

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 the file number in the caption above and should be submitted by June 24, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-40034; File No. SR-NSCC-98-3]

### **Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Temporary Accelerated Approval of a Proposed Rule Change That Establishes Additional Procedures for Class A Surveillance of Certain Settling Members and Permits the Collection of Clearing Fund and Other Collateral Deposits From These Settling Members**

May 27, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 23, 1998, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-NSCC-98-3) as described in Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to extend on an accelerated basis temporary approval of the proposed rule change through May 31, 1998.

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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