

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40542; File No. SR-NASD-98-71]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Establishment of a Pilot Program To Provide Proprietary Trading Data via Nasdaq Trader.com

October 9, 1998.

On September 29, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly-owned subsidiary, 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"),¹ and Rule 19b-4 thereunder.² 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.

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

Nasdaq is proposing to amend Rule 7010 of the Rules of the NASD, to establish a pilot program to provide proprietary trading data via Nasdaq's NasdaqTrader.com web site. Below is the text of the proposed rule change. Proposed new language is in italics.

(o) Nasdaq Trader.com Proprietary Data Fee

The charge to be paid by the subscriber for each entitled user receiving Nasdaq Proprietary Data via NasdaqTrader.com is \$100 per month (monthly maximum of 25 Historical Research Reports) or \$150 per month (monthly maximum of 100 Historical Research Reports). The Proprietary Data Package includes:

- (1) For NASD Member Firms:*
 - (a) Daily Share Volume Report for a Broker/Dealer (Subscriber's information only)*
 - (b) Daily Share Volume Reports for a Security*
 - (c) Monthly Summaries*
 - (d) Monthly Compliance Report Cards (Subscriber's information only)*
 - (e) Historical Research Reports*
 - (i) Market Maker Price Movements Report*

(ii) Equity Trade Journal (Subscriber's information only)

(2) For Non-Member Qualified Institutional Buyers:

(a) Daily Share Volume Reports for a Security

(b) Monthly Summaries

(c) Historical Research Reports

(i) Market Maker Price Movement Report

The Association may modify the contents of the Proprietary Data Package.

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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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Nasdaq is proposing to establish a pilot proprietary trading data distribution facility accessible to NASD members and qualified institutional buyers through its NasdaqTrader.com web site. Under the proposal, NASD member firms will be able to obtain data, verified for accuracy by Nasdaq's Automated Confirmation Transaction Service ("ACT"), regarding their trading volume in securities in which they report volume as well as disseminate some or all of that information to other users of the system. Fees from system subscribers will be used to offset the costs associated with the maintenance and marketing of the secured content as well as the product's portion of the ongoing maintenance and administration of the Nasdaq web security infrastructure.³

Specifically, NASD member firms who elect to receive Nasdaq's Proprietary Data Package (NPDP) will be able to obtain the following: (1) Daily Share Volume Reports displaying the firm's own T+1 daily trading volume for each issue in which the firm reports volume; (2) Daily Share Volume Reports for a Security containing voluntarily-posted daily share volumes in

individual issues traded by other NASD member firms; (3) Monthly Summaries providing monthly trading volume statistics for the top 50 market participants broken down by industry sector, security, or type of trading (e.g. block or total); (4) Monthly Compliance Report Cards outlining the firm's own compliance status in the areas of trade reporting, firm quote compliance and best execution obligations; and (5) Historical Research Reports consisting of Market Maker Price Movement Reports ("MMPMR") which show all of a Market Maker's quote updates (price, size and inside quote at time of update) for a security on a specified date, and, Equity Trade Journals ("ETJs") which detail all trades reported through ACT by the NASD member firm for a selected security and date.⁴ With the exception of the individual Daily Share Volume Reports for a Broker/Dealer, Compliance Report Card, and ETJ reports, non-NASD member Qualified Institutional Buyers ("QIBs")⁵ who subscribe to the system will also be able to obtain the NPDP. Due to capacity restrictions, NPDP users seeking Historical Research Reports will be limited to either 25 or 100 monthly reports depending on the subscription fee paid.

The NPDP pilot proposal is a direct response to requests from professional Nasdaq market participants to increase the availability of Nasdaq-verified trading data through NasdaqTrader.com. Sell-side traders use share volume to display their trading activity in specific Nasdaq issues while buy-side representatives utilize similar data to determine which sell-side firm to select for execution of their orders. NPDP attempts to create a secure, controlled mechanism to allow these parties to display and view such data and make informed choices regarding their trading partners.

Nasdaq also recognizes, however, that the data contained in the NPDP is proprietary and confidential. As such, Nasdaq has established a secure information display and retrieval environmental through the combined use of User IDs, passwords and digital certificates.⁶ To further protect NASD

⁴ For a trial period, an individual firm's proprietary data described in numbers 1, 4 and 5 above are currently being made available through NasdaqTrader.com without charge. Upon SEC approval of the proposed fee, Nasdaq will begin to assess the proposed monthly fee for the entire data package.

⁵ For purposes of this service, Nasdaq will rely on the definition of "Qualified Institutional Buyer" found in Rule 144A of the Securities Act of 1933.

⁶ A digital certificate is an electronic code or computer file assigned by Nasdaq to each user to

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Rel. No. ____ (October __, 1998) (File No. SR-NASD-98-70), n.4.

member firms' proprietary data, the service is designed so that firm-specific reports regarding daily trading volume figures will only be made available to the member firm itself, unless that member determines voluntarily to submit the information to the Daily Share Volume Report for a Security for dissemination to other NPDP subscribers.⁷ Additional firm specific reports such as the Monthly Compliance Report Cards and the ETJ will also be restricted so that NASD member firms will only be allowed to view their own information.

Concerns for data protection, and the system security requirements needed to encourage greater disclosure of proprietary trading statistics, also shaped Nasdaq's determination to make NPDP available only to NASD member firms and QIBs. Nasdaq believes that these groups contain the largest number of market participants who may benefit from the availability of the voluntarily-disclosed, Nasdaq-verified, trading volumes and related information available via the NPDP service. At the same time, these participants are also the most likely to possess the requisite staff and resources to comply with NPDP system security mandates. Moreover, the QIBs defined in Rule 144A consist of entities registered with various regulatory bodies which Nasdaq believes provides an additional layer of protection against the improper use of its members' proprietary trading data. Finally, the Rule 144A QIB definition sought to be relied on by Nasdaq has already been adopted by the Commission as a standard delineating the characteristics of institutional market participants. As such, Nasdaq believes that this standard is an appropriate starting point to evaluate the commercial viability of its new data package during the pilot program.⁸

Given the commercial uncertainties associated with the launching of any new data product, Nasdaq will be establishing this new service as a 12 month pilot program to evaluate user interest. As part of that evaluation, Nasdaq may experiment with the mix of information available in the NPDP by adding and deleting various components of the package based on user feedback.

identify the person accessing its system and to verify that the user is accessing the correct database.

⁷ Daily Share volume Reports for a Security, available for viewing by all system users, will be compiled based on voluntarily-submitted daily figures.

⁸ Nasdaq will monitor requests for the NPDP from institutes not meeting the QIB standard of Rule 144A with a view to expanding the availability of the data package to those institutions consistent with Nasdaq Trader.com's security limitations.

Nasdaq believes the proposed rule change is consistent with the provisions of Section 15A(b)(6)⁹ of the Act. Nasdaq believes that the NPDP pilot fosters cooperation and coordination with persons engaged in facilitating transactions in securities and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

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

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 date of 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 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 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

⁹ Section 15A(b)(6) requires the Commission to determine that the rules of the association are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers, and in general, to protect investors and the public interest.

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 November 19, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40540; File No. SR-NSCC-98-07]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Expanding the Annuities Processing Service

October 9, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on June 24, 1998, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I, II, and III below, which items have been prepared primarily by NSCC. 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

The proposed rule change will amend NSCC's rules to implement the second phase of its Annuity Processing Service ("APS").

¹⁰¹⁷ CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).