

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.<sup>10</sup> 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)<sup>11</sup> and 15A(b)(6)<sup>12</sup> 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 Act<sup>13</sup> and rule 19b-4(f)(6) thereunder.<sup>14</sup> 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.<sup>15</sup>

### **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.<sup>16</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 03-25342 Filed 10-6-03; 8:45 am]

**BILLING CODE 8010-01-P**

## **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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>16</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> 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.

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

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

<sup>12</sup> 15 U.S.C. 78o-3(b)(6).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 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).

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

NYSE proposes to amend its *Interpretation Handbook* by eliminating from an existing Interpretation of NYSE Rule 345, a prohibition on persons designated as "Registered-Representative-In-Charge" from associating with members and member organizations as independent contractors. Below is the text of the proposed rule change. Proposed new language is italicized. Proposed deletions are in [brackets].

\* \* \* \* \*

### Rule 345 Employees—Registration, Approval, Records

#### (a) Registration

##### /01 Exceptions

No change.

##### /02 "Independent Contractors"

The Exchange will not object to the assertion by a natural person registered representative of "independent contractor" status if such status will not preclude his or her characterization and treatment as an "employee" for purposes of the Constitution and Rules of the Exchange. Such salesperson and the member organization must agree that the natural person is subject to the organization's direct, detailed supervision, control and discipline and is covered by its fidelity bond.

Once a member organization approves a registered representative's status of "independent contractor" the following conditions must be met:

1. No change.
2. No change.
3. No change.
4. No change.

Written notification of the cessation of "independent contractor" status is to be given to the Qualifications and Registrations Department of the Exchange.

This interpretation does not apply to persons delegated supervisory functions (e.g., Branch Office Manager[, Registered Representative-In-Charge]), pursuant to Rule 342(b)(1) nor does it permit the incorporation of registered representatives. (See Interpretation Memo No. 78-7 dated December 27, 1978.)

This interpretation does not preclude a registered representative who is the sole employee in a small office (e.g., a residence office) or a registered representative who is designated as "in-charge" pursuant to Rule 342.15, provided such person has not been assigned or delegated supervisory

duties, from asserting and obtaining approval for independent contractor status.

*A registered representative who is designated as "in-charge" and who seeks status as an independent contractor must submit all of the documentation required in items 1 through 4, above, as well as a written statement by the member or member organization that it has not assigned or delegated any supervisory responsibilities to the registered representative-in-charge.*

(Also see Rule 342.15/02, page 3414.)

\* \* \* \* \*

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

In its filing with the Commission, NYSE 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. NYSE 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

Rule 342 ("Offices "Approval, Supervision and Control") requires, in part, that each office of a member or member organization shall be under the supervision and control of the member or member organization establishing it and of the person delegated such authority and responsibility. Further, the structure and administration of Exchange rules mandate that all employees of members and member organizations, including registered representatives, be subject to the direct and ongoing supervision and control of their member organization employer.

In addition, Rule 342.15 provides that small offices (those with three or fewer registered representatives) may be in the charge of a qualified principal or manager who is either resident or non-resident in that location. Interpretation /02 to Rule 342.15 provides that where a qualified supervisor is not on the premises of a small office, a resident registered representative is to be designated as "in charge." However, it is still required that all supervisory functions (e.g., approval of accounts, review of account activity and

correspondence, etc.) are to be conducted by qualified supervisors.

Interpretation /02 to Rule 345(a) permits a registered representative to be associated with a member or member organization as an "independent contractor" provided such status does not preclude the independent contractor's characterization and treatment as an employee for purposes of the Constitution and Rules of the Exchange (e.g., registration, qualification, supervision by the member or member organization, and being subject to the Exchange's jurisdiction). However, Interpretation /02 to Rule 345(a) prohibits persons delegated supervisory responsibilities including persons designated as "registered representative-in-charge," from claiming the status of independent contractor.

The Exchange believes that persons delegated supervisory responsibilities for members and member organizations generally must be full-time employees (the Exchange has exemption authority under Rule 346(e)).

Member organizations have stated that the prohibition against a registered representative-in-charge from being an independent contractor is creating unnecessary burdens in small offices with two or three registered representatives, all of whom may wish to be independent contractors. Typically, the type of office that would have independent contractors is one with limited securities sales activities, e.g., the registered representatives work part-time for their member or member organizations and part-time selling products or services for affiliated or non-affiliated companies, such as banking, tax preparation, or accounting services. These individuals usually are employed by the non-member organization and conduct their limited securities activities through an independent contractor relationship with the member or member organization.

The Exchange proposes the elimination of "registered representative-in-charge" as a category of registered person precluded from being an independent contractor under this interpretation. In this regard, the Exchange has determined that members and member organizations generally assign administrative as opposed to supervisory functions to persons they designate as registered representatives-in-charge. Pursuant to an existing written interpretation (Rule 342.15/02), primary supervision is carried out by qualified branch managers, (persons who have passed the General Securities Sales Supervisor Qualification

Examination, Series 9 and 10) at designated parent branch offices or the main office of the member or member organization in accordance with its overall written plan of supervision.

Accordingly, Interpretation /02 to Rule 345(a) will be amended to permit registered representatives-in-charge to associate with members and member organizations as independent contractors provided that the member or member organization neither assigns nor delegates supervisory responsibilities to such persons. Further, in addition to the documents already required to be submitted under this Interpretation in seeking approval of independent contractor status (e.g., Employment Agreement, Consent to Jurisdiction Form, written assurances that the member or member organization will supervise and control all activities of the independent contractor the same as it regulates the activities of all other registered representatives), (see NYSE Interpretation 345(a) /02), the member or member organization would be required to submit a written statement confirming that it has not assigned or delegated any supervisory responsibilities to such person.

## 2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5)<sup>4</sup> of the Exchange Act, which requires, among other things, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and in general to protect investors and the public interest.

### *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 that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

## 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 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 NYSE. All submissions should refer to File No. SR-NYSE-2003-26 and should be submitted by October 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-25341 Filed 10-6-03; 8:45 am]

**BILLING CODE 8010-01-P**

## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3548]

#### District of Columbia (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective September 29, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on September 18, 2003 and continuing through September 29, 2003.

All other information remains the same, *i.e.*, the deadline for filing

applications for physical damage is November 19, 2003, and for economic injury the deadline is June 21, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 1, 2003.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 03-25371 Filed 10-6-03; 8:45 am]

**BILLING CODE 8025-01-P**

## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3547]

#### State of Maryland (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective September 29, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on September 18, 2003 and continuing through September 29, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 18, 2003, and for economic injury the deadline is June 21, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 1, 2003.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 03-25370 Filed 10-6-03; 8:45 am]

**BILLING CODE 8025-01-P**

## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3545]

#### State of North Carolina (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective September 26, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on September 18, 2003 and continuing through September 26, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 17, 2003, and for economic injury the deadline is June 18, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

<sup>4</sup> 15 U.S.C. 78f(b)(5).

<sup>5</sup> 17 CFR 200.30-3(a)(12).