

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50304; File No. SR-NASD-2004-114)

September 1, 2004

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Fees for Depth of Book Data in Exchange-Listed Securities in the Nasdaq Market Center

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 July 26, 2004, 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, II, and III below, which Items have been prepared by Nasdaq. On August 24, 2004, Nasdaq filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Nasdaq proposes to establish a monthly per-controlled device fee for depth of book information for exchange-listed securities in the Nasdaq Market Center. Nasdaq intends to implement the fee on October 1, 2004. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated August 23, 2004 (“Amendment No. 1”). Amendment No. 1 replaces the original proposed rule change in its entirety.

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**4707. Entry and Display of Quotes/Orders**

(a) through (e) No Change.

(f) [IM Prime--"IM Prime"] Open View -- "Open View" is a separate data feed that Nasdaq will make available for a fee that is approved by the Securities and Exchange Commission. This separate data feed will display with attribution to ITS/CAES Market Makers' MPIDs all Attributable Quotes/Orders on both the bid and offer side of the market for the price levels that are disseminated in the Nasdaq Order Display Facility for ITS Securities.

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**7010. Charges for Services and Equipment**

(a) –(p) No change.

(q) Nasdaq Data Entitlement Packages

(1) through (7) No Change.

**(8) OpenView**

The OpenView entitlement package consists of all individual Nasdaq Market Center participant orders and quotes in exchange-listed securities in the system. There shall be a charge of \$6 per month per controlled device for Open View.

(r) –(u) No change.

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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

1. Purpose

With the introduction of the Nasdaq Market Center as a platform to trade exchange-listed securities, Nasdaq will have the ability to collect and disseminate multiple levels of firm quotes/orders in those securities to market participants. This data includes all exchange-listed securities quoted through the Nasdaq Market Center. Nasdaq's proposal establishes a \$6 monthly per-controlled device<sup>4</sup> fee for such real-time "depth of book" information, which is known as "OpenView."<sup>5</sup> In addition, Nasdaq proposes to amend NASD Rule 4707(f) to change the name of the "IM Prime" data feed to "OpenView."

Nasdaq states that it chose the initial \$6 monthly fee amount based on anticipated message traffic through the new data feed in relation to the message traffic levels and prices for similar data services already in operation.<sup>6</sup> As noted above, Nasdaq intends to implement the fee on October 1, 2004. The \$6 fee will apply to vendors and subscribers that access the data through either a market data vendor or any internal data dissemination system operated by a broker-dealer.

2. Statutory Basis

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<sup>4</sup> Controlled device is defined in NASD Rule 7010(q)(6)(A).

<sup>5</sup> "OpenView" is part of the ViewSuite package of data entitlements provided under NASD Rule 7010(q).

<sup>6</sup> See e.g., Securities Exchange Act Release No. 46534 (September 23, 2002), 67 FR 61368 (September 30, 2002) (approving SR-NASD 2002-86 and establishing a \$6 fee for similar listed quotation data in the event Nasdaq becomes a national securities exchange).

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act<sup>7</sup> in general, and Section 15A(b)(5) of the Act<sup>8</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 which the association operates or controls. As previously noted, Nasdaq chose the initial \$6 monthly fee amount based on anticipated message traffic through the new data feed in relation to the message traffic amounts and prices for similar data services available to market participants that are already in operation.

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.

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<sup>7</sup> 15 U.S.C. 78o-3.

<sup>8</sup> 15 U.S.C. 78o-3(b)(5).

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act.

Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2004-114 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2004-114. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-NASD-2004-114 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).