

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50305; File No. SR-NASD-2004-101)

September 1, 2004

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change to Provide a Monthly Flat Fee for the Internal Distribution of PostData as an Alternative to the Monthly Per-Subscriber Fees Presently Available Under NASD Rule 7010(s)

On June 28, 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"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to provide a monthly flat fee for the internal distribution of PostData as an alternative to the monthly per-subscriber fees presently available under NASD Rule 7010(s). The proposed rule change was published for notice and comment in the Federal Register on July 29, 2004.³ The Commission received no comments on the proposal.

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association⁴ and, in particular, the requirements of Section 15A(b)(5) of the Act,⁵ which requires, among other things, that NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which NASD operates or controls.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 50068 (July 23, 2004), 69 FR 45358.

⁴ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78o-3(b)(6).

The Commission notes that PostData is currently operating as a pilot. The Commission expects that Nasdaq will evaluate the fees it has established for PostData, and provide the Commission with a report of its findings before the expiration of, or extension of, the pilot period.⁶

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act⁷, that the proposed rule change (SR-NASD-2004-101) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland
Deputy Secretary

⁶ See Securities Exchange Act Release No. 45270 (January 11, 2002), 67 FR 2712 (January 18, 2002)(SR-NASD-99-12).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).