

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50545; File No. SR-NASD-2004-114)

October 14, 2004

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change, as Amended, Relating to Fees for Depth of Book Data in Exchange-Listed Securities in the Nasdaq Market Center

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”), 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 establish a monthly per-controlled device fee for depth of book information for exchange-listed securities in the Nasdaq Market Center. On August 24, 2004, Nasdaq filed Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended, was published for comment in the Federal Register on September 9, 2004.⁴ The Commission received no comment letters on the proposal, as amended. On October 6, 2004,⁵ Nasdaq submitted Amendment No. 2 to the proposed rule change. This order approves the proposed rule change, as amended.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

⁴ See Securities Exchange Act Release No. 50304 (September 1, 2004), 69 FR 54714.

⁵ See letter from Edward S. Knight, Executive Vice President, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated October 6, 2004 (“Amendment No. 2”). Amendment No. 2 made a minor technical change to the proposed rule text, as such, it is not subject to notice and comment.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁶ In particular, the Commission believes that the proposal is consistent with Section 15A(b)(5) of the Act,⁷ which requires, among other things, that the rules of an association 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 an association operates or controls.

Specifically, the Commission believes that Nasdaq's dissemination of multiple levels of firm quotes/orders in exchange-listed securities should increase the market information available to market participants. The Commission believes the proposed fee is reasonable in that Nasdaq represents that the \$6 monthly fee is based on anticipated message traffic through its new data feed, OpenView, in relation to the message traffic amounts and prices for similar data services currently in operation on Nasdaq.

⁶ In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78q-3(b)(5).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act⁸ the proposed rule change (SR-NASD-2004-114), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Jill M. Peterson
Assistant Secretary

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).