

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49663; File No. SR-NASD-2004-036)

May 6, 2004

Self-Regulatory Organizations; Order Granting Approval of a Proposed Rule Change by the National Association of Securities Dealers, Inc. to Revise and Update the Fee Schedule for OTC Bulletin Board Historical Trading Activity Reports

I. Introduction

On March 1, 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 revise and update the fee schedule for the OTC Bulletin Board (“OTCBB”) historical trading activity reports. The proposal was published for comment in the Federal Register on April 1, 2004.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of Proposed Rule Change

The proposed rule change would revise the fee schedule for the OTCBB historical trading activity reports that are available through the OTCBB website (“OTCBB.com”). The proposal would establish that the fees that Nasdaq would charge for the Issues Summary Statistics reports and the Intra-Day Quote and Intra-Day Time and Sales Data reports of OTCBB securities are identical to the fees assessed for similar reports for Nasdaq securities that are available through the website for Nasdaq traders

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 49486 (March 26, 2004), 69 FR 17254.

("NasdaqTrader.com"). In addition, the proposed rule change would establish a new fee for an up-to-date directory listing the contact information of all OTCBB issuers.

III. Discussion

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.⁴ Specifically, the Commission finds that the proposal is consistent with the requirements of Section 15A(b)(5) and (b)(6) of the Act.⁵ Section 15A(b)(5) requires that the rules of a registered national securities 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 the association operates or controls. Section 15A(b)(6) requires, among other things, that the rules of national securities association not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission notes that the pricing structure for the historical trading activity reports available through OTCBB.com for OTCBB securities is identical to the pricing structure for similar reports available through NasdaqTrader.com for Nasdaq securities. The Commission has previously determined that the fee structure for these NasdaqTrader.com reports is consistent with the Act.⁶ The Commission believes that a similar fee structure applied to historical data for OTCBB securities is also consistent

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

⁵ 15 U.S.C. 78o(b)(5) and (b)(6).

⁶ See Securities Exchange Act Release No. 45102 (November 26, 2001), 67 FR 59830 (November 30, 2001) (Order approving SR-NASD-2001-59).

with the Act. Finally, the Commission believes that the fee that Nasdaq proposes to charge for the All OTCBB Issuer Directory is consistent with the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-NASD-2004-036) be, and hereby is, approved.

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

Margaret H. McFarland
Deputy Secretary

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).