

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 submissions should refer to File No. SR-NASD-2003-66 and should be submitted by May 15, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47685; File No. SR-NASD-2003-73]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend the Pilot Period for the Regulatory Fee and the Trading Activity Fee

April 16, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and rule 19b-4 thereunder,² notice is hereby given that on April 14, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I and II below, which Items have been prepared by the NASD. The NASD filed the proposal pursuant to section 19(b)(3)(A) of the Act,³ and rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The NASD proposes to extend the pilot period for the Trading Activity Fee ("TAF") through June 1, 2003. The TAF (as originally proposed in SR-NASD-

2002-98) is in effect, and is set to expire on April 15, 2003.⁶ The NASD is requesting the Commission approve SR-NASD-2002-148, granting permanent approval of the TAF, before the expiration of the TAF pilot on June 1, 2003.⁷ If the Commission does not approve SR-NASD-2002-148 before the expiration of the TAF pilot on June 1, 2003, the trading fee component of the member regulatory pricing structure will revert to Section 8 of Schedule A to the NASD By-Laws, as amended.

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

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in item IV below. The NASD 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

On July 24, 2002, the NASD filed SR-NASD-2002-98, which proposed a new member regulatory pricing structure, including the TAF, to replace the existing trading fee contained in Section 8 of Schedule A to the NASD By-Laws.⁸ SR-NASD-2002-98 is currently in effect. Assessments under the TAF were effective as of October 1, 2002, payable January 15, 2003.⁹ On October 18, 2002, the NASD established a sunset

⁶ See Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002) (SR-NASD-2002-98). See also Securities Exchange Act Release Nos. 47112 (December 31, 2002), 68 FR 824 (January 7, 2003) (SR-NASD-2002-182), 47436 (March 4, 2003), 68 FR 11422 (March 10, 2003) (SR-NASD-2003-26), and 47623 (April 3, 2003), 68 FR 17712 (April 10, 2003) (SR-NASD-2003-65).

⁷ See Securities Exchange Act Release No. 46817 (November 12, 2002), 67 FR 69785 (November 19, 2002) (SR-NASD-2002-148).

⁸ Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002) (SR-NASD-2002-98). See also Securities Exchange Act Release No. 46417 (August 23, 2002), 67 FR 55893 (August 30, 2002) (SR-NASD-2002-99). The NASD also published three *Notices to Members* describing the proposed changes and addressing interpretive questions posed by NASD members. See *Notices to Members 02-41* (July 2002), *02-63* (September 2002), and *02-75* (November 2002).

⁹ Member firms were required to pay the TAF in accordance with the pilot program (for the first quarter starting October 1, 2002) by no later than January 15, 2003, and thereafter, on a monthly basis.

provision whereby the TAF established by SR-NASD-2002-98 would cease to exist after December 31, 2002.¹⁰ Upon expiration of SR-NASD-2002-98, the member regulatory pricing structure was to revert to Section 8 of Schedule A to the NASD By-Laws, as amended.

On December 24, 2002, the NASD extended the TAF pilot through March 1, 2003. On February 28, 2002, the NASD again extended the TAF pilot through April 1, 2003. On March 31, 2003, the NASD again extended the TAF pilot program through April 15, 2003. With the instant proposed rule change, the NASD is extending the TAF pilot through June 1, 2003, to allow the Commission additional time to review issues presented by the proposal to make the TAF permanent (SR-NASD-2002-148). The NASD requests that the Commission approve SR-NASD-2002-148 before the expiration of the TAF pilot on June 1, 2003.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5),¹¹ which requires, among other things, that the 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 that the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD 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, as amended.

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

Written comments on this proposed rule change were neither solicited nor received. Written comments, however, have been solicited by publication in the **Federal Register** of SR-NASD-2002-98, SR-NASD-2002-147, SR-NASD-2002-148, SR-NASD-2002-182, and SR-NASD-2003-26.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

¹⁰ At the same time, the NASD filed a new proposed rule change (SR-NASD-2002-148), substantially similar to SR-NASD-2002-98, but filed under Section 19(b)(1) of the Act, to allow for additional comment.

¹¹ 15 U.S.C. 70-3(b)(5).

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The Commission waived the five-day pre-filing notice requirement. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii). The NASD also asked the Commission to waive the 30-day operative delay.

(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 Act¹² and rule 19b-4(f)(6) thereunder.¹³ 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.

The NASD has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the TAF pilot to operate without interruption through June 1, 2003. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹⁴

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-2003-73 and should be submitted by May 15, 2003.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 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).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47688; File No. SR-NASD-2003-52]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish a Fee for Receipt of Mutual Fund Quotation Service Data by Distributors

April 17, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 24, 2003, 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. The Commission is publishing this notice to solicit comments on the proposed rule change 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 \$1,000 per month distributor fee for receipt of Nasdaq mutual fund information. The fee would be assessed on all distributors, as defined in proposed Rule 7090(e)—*i.e.*, those firms that receive the data and distribute it to third parties. Nasdaq will make the proposed rule change effective immediately upon Commission approval.

The text of the proposed rule change is below. Proposed new language is in *italics*.

Rule 7090. Mutual Fund Distributor Fee

(a)-(d) No change.

(e) *Distributors receiving MFQS shall pay a monthly fee of \$1,000. For the purposes of this subsection only, the term "distributor" shall refer to any firm that receives the MFQS data feed and distributes it to third parties. All such*

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

firms must execute a Nasdaq Distributor Agreement.

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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

The Nasdaq Mutual Fund Quotation Service (MFQS) collects daily Net Asset Value information from approximately 18,000 mutual funds. This data is distributed via the Nasdaq Level 1 data feed. Currently, Nasdaq does not charge for the receipt or distribution of mutual fund data.

Nasdaq states that it creates value for distributors and their subscribers by collecting and processing the mutual fund data, producing the data feed, and providing data quality services. The mutual fund data product is an important component of integrated financial information services that are provided by major market data vendors, financial web sites, and online brokerage services. Nasdaq represents that the \$1,000 per month fee will compensate it for these value-added services without discouraging wide distribution of the data.

Nasdaq is not charging recipients of the data feed who do not distribute the data to third parties. Unlike other data feeds which can be used for order routing, the MFQS data is only useful for display purposes. Those firms that only distribute it internally obtain no additional commercial advantage from resale of the data, and accordingly Nasdaq is not charging them. Thus, while the term "distributor" is used elsewhere in the NASD's rules to include a firm that receives a data feed and distributes it internally,³ in

³ See, e.g., Rule 7010(q) footnote 8. Telephone conversation between Eleni Constantine, Office General Counsel, Nasdaq and Gordon Fuller, Counsel to the Assistant Director, Division of Market Regulation, Commission, on April 14, 2003.