

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51323; File No. SR-NASD-2005-028)

March 4, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Discontinuation of the Nasdaq PostData Pilot Program

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 February 17, 2005, 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. Nasdaq has filed the proposal as a “non-controversial” rule change 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

Nasdaq is filing the proposed rule change to terminate the PostData pilot program, as of March 31, 2005, the date that its current pilot approval expires. The text of the proposed rule

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 Nasdaq asked the Commission to waive the five-day pre-filing notice requirement. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii). The Commission granted Nasdaq’s request.

change is below. Proposed new language is in italics; proposed deletions are in brackets.⁶

7010. System Services

(a) - (r) No change

(s) Reserved [NasdaqTrader.com Volume and Issue Data Package Fee

The charge to be paid by the subscriber for each entitled user receiving the Nasdaq Volume and Issue Data Package via NasdaqTrader.com shall be \$70 per month. The charge to be paid by market data distributors for this information shall be \$35 per month for each end user receiving the information through the data vendor. The availability of this service through NasdaqTrader.com shall be limited to NASD members, Qualified Institutional Buyers (as defined in Rule 144A of the Securities Act of 1933) and data vendors. The Volume and Issue Data package includes:

- (1) Daily Share Volume Reports
- (2) Daily Issue Data
- (3) Monthly Volume Summaries
- (4) Buy Volume Report
- (5) Sell Volume Report
- (6) Crossed Volume Report
- (7) Consolidated Activity Volume Report

All fees assessed under this subsection will be waived for a period of up to two months for all new subscribers and potential new subscribers. This fee waiver period would be applied on a rolling basis, determined by the date on which a new subscriber or potential subscriber contacts Nasdaq to receive access to PostData.]

⁶ The proposed rule change is marked to show changes from the rule text appearing in the NASD Manual available at <http://www.nasd.com>.

(t) – (v) 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

Nasdaq is proposing to terminate the PostData pilot program, as of March 31, 2005, the date that its current pilot approval expires, because Nasdaq would like to reassess the demand for and the composition of data in this product. On January 11, 2002, the Commission first approved Nasdaq PostData, a voluntary trading data distribution facility, accessible to NASD members, buy-side institutions and market data vendors through the NasdaqTrader.com Web site.⁷ Nasdaq periodically expanded the content of Nasdaq PostData and extended this pilot on a number of occasions, most recently through March 31, 2005.⁸

⁷ See Securities Exchange Act Release No. 45270 (Jan. 11, 2002), 67 FR 2712 (Jan. 18, 2002) (SR-NASD-99-12).

⁸ See Securities Exchange Act Release Nos. 49376 (Mar. 9, 2004), 69 FR 12188 (Mar. 15, 2004) (SR-NASD-2004-038) (extending pilot through March 31, 2005); 48576 (Sept. 30, 2003), 68 FR 57946 (Oct. 7, 2003) (SR-NASD-2003-142) (extending pilot through March 2004); 47634 (April 4, 2003), 68 FR 17714 (April 10, 2003) (SR-NASD-2003-60) (extending pilot through September 2003); 47503 (March 14, 2003), 68 FR 13745 (March 20, 2003) (SR-NASD-2003-35) (extending pilot through March 2003); and

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 15A(b)(5)⁹ and Section 15A(b)(6)¹⁰ of the Act. Section 15A(b)(5) requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by a national securities association. Nasdaq believes that it is not possible to offer Nasdaq PostData at a reasonable fee that equitably allocates fees and charges among its members and users.

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

Nasdaq does not believe that the proposed rule change will impose any burden on competition 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

Nasdaq has neither solicited nor received comments on the proposed rule change.

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

Because the foregoing rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

At any time within 60 days of the filing of such proposed rule change, the Commission may

47210 (Jan. 17, 2003), 68 FR 3912 (Jan. 27, 2003) (SR-NASD-2003-02) (extending pilot through February 2003).

⁹ 15 U.S.C. 78o-3(b)(5).

¹⁰ 15 U.S.C. 78o-3(b)(6).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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. Please include File Number SR-NASD-2005-028 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-2005-028. 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 the

filing also will be available for inspection and copying at the principal offices of Nasdaq. 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-2005-028 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.¹³

Margaret H. McFarland
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).