

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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of EMCC. All submissions should refer to the File No. SR-EMCC-2003-03 and should be submitted by September 16, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48374; File No. SR-NASD-2003-129]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify the Fees for Trading and Compliance Data Available to NASD Member Firms Via NasdaqTrader.com

August 20, 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 August 15, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), 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 filed the proposal pursuant to section 19(b)(3)(A)(ii) of the Act,³ and rule 19b-4(f)(2) thereunder⁴ as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization, which renders the proposal effective upon filing with the Commission. 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 proposes to modify the fees for trading and compliance data available to NASD member firms via NasdaqTrader.com. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

7000. Charges for Services and Equipment

7010. System Services

(a)-(m) No change.

(n) NasdaqTrader.com Trading and Compliance Data Package Fee.

The charge to be paid by an NASD Member Firm for each entitled user receiving Nasdaq Trading and Compliance Data Package via NasdaqTrader.com is \$100 [75] per month (monthly maximum of 25 Historical Research Reports) or \$130 [100] per month (monthly maximum of 100 Historical Research Reports). The Nasdaq Trading and Compliance Data Package includes:

- (1) Daily Share Volume Report for a Broker/Dealer (Member Firm's information only).
- (2) Monthly Compliance Report Cards (Member Firm's information only).
- (3) Monthly Summaries.
- (4) Historical Research Reports.
- (i) Market Maker Price Movement Report.
- (ii) Equity Trade Journal (Member Firm's information only).

The Association may modify the contents of the Nasdaq Trading and Compliance Data Package from time to time based on subscriber interest.

(o)-(s) 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 modify the fees for trading and compliance data available to NASD member firms via NasdaqTrader.com.

NasdaqTrader.com allows NASD member firms to obtain data regarding their own trading volume in securities in which they report volume as well as information concerning their compliance with NASD rules. Specifically, NASD member firms that subscribe to Nasdaq's Trading and Compliance Data Package ("Data Package") can obtain the following reports: (1) Daily Share Volume Reports, which provide a member firm's own daily share volume for each security in which the firm reports volume; (2) Monthly Compliance Report Cards, which outline a firm's own compliance with various NASD rules; (3) Monthly Summaries, which provide monthly trading volume statistics for the top 50 market participants broken down by industry sector, security or type of trading; and (4) Historical Research Reports, which provide a variety of historical trading data such as a market maker's quote updates for a security on a specified date or trades reported through the Automated Confirmation Transaction Service ("ACT") by a NASD member firm for a selected security and date.

Use of this service is voluntary and NASD member firms have the option of subscribing to two different levels of the Data Package. The "basic" level, which has a fee of \$75 per month, allows access to a maximum of 25 Historical Research Reports per month. The "premium" level, which has a fee of \$100 per month, allows access to a maximum of 100 Historical Research Reports per month. These fees have not increased since the launch of the service in December 1998, even though several enhancements have been made since that time. Some of these enhancements include: (1) Various additional types of Monthly Compliance Report Card reports that show such things as compliance with the short sale bid test and ACT reporting; (2) detailed trade data specific to each Monthly Compliance Report Card; and (3) additional types of Historical Research Reports such as SuperMontage Activity Reports and Daily Security Position Data Reports.

In order to help cover the costs associated with the maintenance of the Data Package service as well as the

⁶ 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)(2).

implementation of additional enhancements to the service in the near future, Nasdaq proposes to increase the subscription fee for the service. Specifically, Nasdaq proposes to increase the subscription fee for the "basic" level from \$75 to \$100 per month and increase the fee for the "premium" level from \$100 to \$130 per month. As previously mentioned, this increase in subscription fees will be the first such increase since the launch of the Data Package service in December 1998.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,⁵ in general, and with section 15A(b)(5) of the Act,⁶ in particular, in that it provides 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 NASD operates or controls. Specifically, use of the Data Package service is voluntary and the subscription fees will be imposed on all member firms equally based on the level of service selected. In addition, the increase in fees will help cover the costs associated with maintaining and enhancing the Data Package service.

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

Nasdaq 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 were neither solicited nor received.

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

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act⁷ and subparagraph (f)(2) of rule 19b-4 thereunder,⁸ because it establishes or changes a due, fee, or other charge imposed by the Association. 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.

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 Association. All submissions should refer to file number SR-NASD-2003-129 and should be submitted by September 16, 2003.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48365; File No. SR-NYSE-98-14]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1, 2, and 3 by the New York Stock Exchange, Inc. Relating to Margin Requirements

August 19, 2003.

I. Introduction

On April 28, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and rule

19b-4 thereunder,² a proposal to amend NYSE rule 431, "Margin Requirements." The NYSE's proposed rule change was published for comment in the **Federal Register** on August 5, 1998.³

The NYSE filed Amendment Nos. 1, 2, and 3 to the proposal on January 5, 1999, November 6, 2002, and May 12, 2003, respectively. In addition, on March 6, 2000, the NYSE filed an Information Memo ("Information Memo") that sets forth the general requirements for the written risk analysis methodology that members will be required to maintain in connection with good faith securities transactions in exempt accounts. Amendment Nos. 1, 2, and 3, as well as the Information Memo, were published for comment in the **Federal Register** on July 14, 2003.⁴

The Commission received one comment regarding the proposal,⁵ as initially published, and the NYSE submitted a response to that comment.⁶ As described more fully below, the Commission received two additional comment letters following the publication of the 2003 Release.⁷ This order approves the proposed rule change, as amended.

II. Description of the Proposal

A. Background

Section 7 of the Exchange Act⁸ authorizes the Board of Governors of the Federal Reserve System ("Federal Reserve Board") to establish requirements for the purchase or carrying of securities on margin.

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 40278 (July 29, 1998), 63 FR 41882.

⁴ See Securities Exchange Act Release No. 48133 (July 7, 2003), 68 FR 41672 (July 14, 2003) ("2003 Release").

⁵ See letter from Paul Saltzman, Senior Vice President and General Counsel, The Bond Market Association ("TBMA") and Patricia Brigantic, Vice President and Senior Associate General Counsel, TBMA, to Jonathan Katz, Secretary, Commission, dated August 26, 1998 ("TBMA I").

⁶ See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, dated April 5, 1999. TBMA I supported the proposal but raised questions regarding the definition of "exempt account" and the treatment of accounts that currently qualify as exempt but that would not satisfy the proposal's financial threshold for exempt accounts. The NYSE answered the questions raised in TBMA I in its response. TBMA I and the NYSE's response are described more fully in the 2003 notice, *supra* note 4.

⁷ See letter from H. Lake Wise, Executive Vice President and Chief Legal Officer, Daiwa Securities America Inc., to Jonathan Katz, Secretary, Commission, dated August 4, 2003 ("Daiwa Letter"); and letter from Paul Saltzman, Executive Vice President and General Counsel, TBMA, to Jonathan G. Katz, Secretary, Commission, dated August 8, 2003 ("TBMA II").

⁸ 12 U.S.C. 78(g).

⁵ 15 U.S.C. 78o-3.

⁶ 15 U.S.C. 78o-3(b)(5).

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 17 CFR 240.19b-4(f)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).