

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44098; File No. SR-NASD-01-15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Nasdaq's Transaction Credit Pilot Program

March 23, 2001.

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 12, 2001, 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 ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one constituting the establishment or change of a due, fee or other charge imposed by the Association under section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2),⁴ which renders the rule 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 amend NASD Rule 7010, System Services, to extend Nasdaq's transaction credit pilot program ("Program") for an additional three months for Tape A and B reports. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

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7010. System Services

(a)-(b) No Change

(c)(1) No Change

(2) Exchange-Listed Securities Transaction Credit. For a pilot period, qualified NASD members that trade securities listed on the NYSE and Amex in over-the-counter transactions reported by the NASD to the Consolidated Tape Association may receive from the NASD transaction credits based on the number of trades so reported. To qualify for the credit with respect to Tape A reports, an NASD member must account for 500 or

more average daily Tape A reports of over-the-counter transactions as reported to the Consolidated Tape during the concurrent calendar quarter. To qualify for the credit with respect to Tape B reports, an NASD member must account for 500 or more average daily Tape B reports of over-the-counter transactions as reported to the Consolidated Tape during the concurrent calendar quarter. If an NASD member is so qualified to earn credits based either on its Tape A activity, or its Tape B activity, or both, that member may earn credits from one or both pools maintained by the NASD, each pool representing 40% of the revenue paid by the Consolidated Tape Association to the NASD for each of Tape A and Tape B transactions. A qualified NASD member may earn credits from the pools according to the member's pro rata share of the NASD's over-the-counter trade reports in each of Tape A and Tape B for each calendar quarter starting with July 1, 2000 for Tape A reports (April 1, 2000 for Tape B reports) and ending with the calendar quarter starting on [January 1] April 1, 2001.

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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 proposes to extend through June 30, 2001, its pilot program to provide a transaction credit⁵ to NASD members that exceed certain levels of trading activity in exchange-listed securities. Nasdaq's InterMarket⁶ is a quotation, communication, and execution system that allows NASD members to trade stocks listed on the New York Stock Exchange ("NYSE") and the American Stock Exchange ("Amex"). The InterMarket competes with regional exchanges like the Chicago Stock Exchange ("CHX") and

⁵ The transaction credit can be applied to any and all charges imposed by NASD or its non-self-regulatory organization affiliates. Any remaining balance may be paid directly to the member.

⁶ Nasdaq's InterMarket formerly was referred to as Nasdaq's Third Market. See Securities Exchange Act Release No. 42907 (June 7, 2000), 65 FR 37445 (June 14, 2000) (SR-NASD-00-32).

the Cincinnati Stock Exchange ("CSE") for retail order flow in stocks listed on the NYSE and the Amex. The NASD collects trade reports from broker-dealers trading these securities in the over-the-counter ("OTC") market and provides the trade reports to the Consolidated Tape Association ("CTA") for inclusion in the Consolidated Tape. As a participant in the CTA Plan, the NASD is entitled to a portion of the revenue that the CTA generates by selling this market data information. NASD's share of the revenues is based on trades that it reports on behalf of these broker-dealers in NYSE-listed securities (Tape A) and in Amex-listed securities (Tape B).

The Program began in 1999.⁷ Under the Program, NASD shares a portion of these tape revenues by providing a transaction credit to NASD members who exceed certain levels of OTC trading activity in NYSE and Amex securities. The Program helps InterMarket market makers and investors lower costs associated with trading listed securities. The Program also is an important tool for Nasdaq to compete against exchanges (particularly CSE and CHX) that offer similar programs⁸ and thereby maintain market share in listed securities.

The Program works as follows. Nasdaq calculates two separate pools of revenue from which credits can be earned: one representing 40% of the gross revenues received by the NASD from the CTA for providing trade reports in NYSE-listed securities executed in the InterMarket for dissemination by CTA (Tape A) and the other representing 40% of the gross revenue received from CTA for reporting Amex trades (Tape B).

Eligibility for transaction credits is based on concurrent quarterly trading activity. For example, an InterMarket participant that enters the market for Tape A or Tape B securities during a particular quarter and prints an average of 500 daily trades of Tape A securities during the time it is in the market, or that averages 500 Tape B prints during such quarter, would be eligible to

⁷ See Securities Exchange Act Release No. 41174 (March 16, 1999), 64 FR 14034 (March 23, 1999) (SR-NASD-99-13). The NASD has subsequently extended the Program. See Securities Exchange Act Release Nos. 42095 (November 3, 1999), 64 FR 61680 (November 12, 1999) (SR-NASD-99-59); 42672 (April 12, 2000), 65 FR 21225 (April 20, 2000) (SR-NASD-00-10); 42907 (June 7, 2000), 65 FR 37445 (June 14, 2000) (SR-NASD-00-32); 43831 (January 10, 2001), 66 FR 4882 (January 18, 2001) (SR-NASD-00-72).

⁸ See Securities Exchange Act Release No. 38237 (February 4, 1997), 62 FR 6592 (February 12, 1997) (SR-CHX-97-01) and Securities Exchange Act Release No. 39395 (December 3, 1997), 62 FR 65113 (December 10, 1997) (SR-CSE-97-12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b-4(f)(2).

receive transaction credits based on its trades during that quarter. Only those NASD members that continue to average a specified daily execution level are eligible for transaction credits and thus able to receive a pro-rata portion of the appropriate pool.⁹ These thresholds permit the NASD to recover appropriate administrative costs related to NASD members that do not exceed the threshold and to provide an incentive to NASD members to actively trade in these securities.

The Program will expire on March 31, 2001. Because the Program has helped Nasdaq maintain market share in listed securities, Nasdaq proposes to extend the Program through the second quarter of 2001. Nasdaq's transaction credit program is being proposed on a pilot basis only. There can be no guarantee that transaction credits will be available to qualifying NASD members beyond the term of the pilot.

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act¹⁰ in that the proposal is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a national market system and, in general, to protect investors and the public interest. Nasdaq also believes the proposal is consistent with section 15A(b)(5) of the Act¹¹ 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 Association operates or controls.

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.

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.

⁹ As explained in Nasdaq's original pilot filing, the qualification thresholds were selected based on Nasdaq's belief that such numbers represent clear examples of a member's commitment to operating in the InterMarket and competing for order flow. See Securities Exchange Act Release No. 41174 (March 16, 1999), 64 FR 14034 (March 23, 1999) (SR-NASD-99-13).

¹⁰ 15 U.S.C. 78-3(b)(6).

¹¹ 15 U.S.C. 78-3(b)(5).

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 Act¹² and subparagraph (f)(2) of Rule 19b-4 thereunder¹³ 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 NASD. All submissions should refer to file number SR-NASD-01-15 and should be submitted by April 20, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-7894 Filed 3-29-01; 8:45 am]

BILLING CODE 8011-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before April 30, 2001. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83-1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer*, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer*, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205-7044.

SUPPLEMENTARY INFORMATION:

Title: SBIC License Application.

No's: 415, 415A.

Frequency: On Occasion.

Description of Respondents: Small Business Investment Companies.

Annual Responses: 450.

Annual Burden: 14,400.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 01-7860 Filed 3-29-01; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG-2001-9255]

Navigation Safety Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Navigation Safety Advisory Council (NAVSAC) and its High Speed Craft and Rules of the Road Subcommittees will meet to discuss various issues relating to the safety of navigation. The meetings are open to the public.