

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45861A, File No. SR-MSRB-2002-04]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change Relating to Rule G-14, on Reports of Sales or Purchases

May 13, 2002.

Correction

In FR Document No. 02-11394, beginning on page 30989 for Wednesday, May 8, 2002, the heading is corrected as set forth above and the first sentence of the second paragraph of Section III, Discussion, on page 30990 was incorrectly stated. The sentence should read as follows:

After careful review, the Commission finds that the MSRB's proposed rule change consisting of an amendment to Rule G-14, on reports of sales and purchases, meets the statutory standard.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45916; File No. SR-NASD-2002-61]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish a Regulatory Fee and To Increase Market Data Revenue Sharing

May 10, 2002.

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 May 3, 2002, 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" or "SEC") 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) 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: (1) Institute a fee for the regulatory services provided in connection with the operation of The Nasdaq Stock Market; (2) expand the market data revenue available for sharing with members under NASD Rule 7010(a)(2) by eliminating the deduction for the cost of regulatory services provided by NASD Regulation, Inc. ("NASDR") and increasing the percentage of eligible revenue that is shared; and (3) extend the pilot period with respect to which market data revenue sharing is available through December 31, 2002.⁵

The proposed rule change is effective on filing, but Nasdaq will implement the proposed rule change beginning on June 1, 2002, for a pilot period running through December 31, 2002.

Accordingly, the first regulatory fee will be based upon market activity during the month of June, and the last fee under the pilot will be based upon market activity during the month of December. The increase in market data revenue sharing will apply to trade reporting activity from June through December.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

7010. System Services

- (a) (1) No change.

¹ 15 U.S.C. 78s(b)(3)(A).

² 17 CFR 240.19b-4(f)(2).

³ When Nasdaq filed the proposed rule change, the proposed rule language stated the pilot period would last "until" December 31, 2002, while the description of the proposal stated the pilot period would last "through" December 31, 2002. To avoid confusion, Nasdaq consented to change the proposed rule language to state that the pilot period would last through December 31, 2002. The Commission did not require Nasdaq to file a formal amendment to accomplish this change, since it was Nasdaq's intention to have the pilot period last through December 31, 2002. See telephone conversation between John M. Yetter, Assistant General Counsel, Nasdaq, and Joseph Morra, Special Counsel, Division of Market Regulation, SEC, May 10, 2002.

(2) Market Data Revenue Sharing

(A) For a pilot period lasting [until] through [October] December 31, 2002, NASD members shall receive a market data revenue sharing credit. The total credit shall be calculated in accordance with the following formula:

$$\text{Credit} = [(0.80)](0.90) \times (\text{Eligible Revenue}) \times (\text{Member's Volume Percentage})$$

(B) Definitions. The following definitions shall apply to this Rule:

(i) "Eligible Revenue" shall mean[:]

[a.] The portion of the net distributable revenues that Nasdaq, through the NASD, is eligible to receive under the Nasdaq UTP Plan, that is attributed to the Nasdaq Level 1 Service for Eligible Securities[, minus]

[b. The portion of the fee charged to Nasdaq by NASD Regulation, Inc. for regulatory services allocated to the Nasdaq Level 1 Service for Eligible Securities.]

(ii) "Eligible Securities" shall mean all Nasdaq National Market securities and any other security that meets the definition of "Eligible Security" in the Nasdaq UTP Plan.

(iii) "Member's Volume Percentage" shall mean the average of:

a. The percentage derived from dividing the total number of trades in Eligible Securities that the member reports in accordance with NASD trade reporting rules to the Automated Confirmation Transaction Service ("ACT") by the total number of trades in Eligible Securities reported to ACT by NASD members, and

b. The percentage derived from dividing the total number of shares represented by trades in Eligible Securities that the member reports in accordance with NASD trade reporting rules to ACT by the total number of shares represented by all trades in Eligible Securities reported to ACT by NASD members.

(iv) "Nasdaq UTP Plan" shall mean the Joint Self-Regulatory Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis.

(b)-(p) No change.

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7110. Regulatory Services

(a) Fee. NASD members will be assessed a monthly fee for the regulatory services provided in connection with the operation of The Nasdaq Stock Market during a pilot period lasting through December 31, 2002. The fee shall be calculated at the beginning of each month using data

¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.