

application for registration in accordance with NASD By-Laws. As such, proctors would be required to file a Form U-4, which provides detailed employment and disciplinary history so that the NASD can monitor the fitness of individuals to serve in that capacity. Any person whose sole registration is as a proctor under the proposed rule change would not be permitted to engage in any other activities requiring registration with the NASD. The proposal would not prohibit a person who is registered with the NASD in any other capacity from also serving as a proctor, as is permitted under existing rules.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,⁴ which requires among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the proposed rule change will result in more efficient delivery of the NASD's continuing education requirements, while maintaining the integrity of the continuing education program.

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 were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

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. 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-2002-110 and should be submitted by September 11, 2002.

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. 34-46356; File No. SR-NASD-2002-83]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish Fees Assessed on Non-Members for the Use of Computer-to-Computer Interface Transmission Control Protocol/Internet Protocol Lines That Use Message Queue Series Software

August 15, 2002.

On June 14, 2002, 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"), pursuant to section 19(b)(1) of the Securities

Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to establish fees for non-members for the use of Computer-to-Computer Interface Transmission Control Protocol/Internet Protocol lines that use Message Queue Series ("MQ Series") software. The proposed rule change was published for notice and comment in the **Federal Register** on July 2, 2002.³ The Commission received no comments on the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association⁴ and, in particular, the requirements of section 15A(b)(5),⁵ which requires the rules of a national securities association to provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility which the association operates or controls. The Commission believes Nasdaq's decision to charge firms that opt to use MQ Series a higher fee for lines that use the software than for comparable lines that do not, and to leave the existing fees unchanged for firms that do not use MQ Series, is reasonable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act⁶, that the proposed rule change (SR-NASD-2002-83) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 46112 (June 25, 2002), 67 FR 44488.

⁴ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78o-3(b)(5).

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).

⁴ 15 U.S.C. 78o-3(b)(6).

⁵ 17 CFR 200.30-3(a)(12).