

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-20375 Filed 9-8-04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50305; File No. SR-NASD-2004-101]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change to Provide a Monthly Flat Fee for the Internal Distribution of PostData as an Alternative to the Monthly Per-Subscriber Fees Presently Available Under NASD Rule 7010(s)

September 1, 2004.

On June 28, 2004, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to provide a monthly flat fee for the internal distribution of PostData as an alternative to the monthly per-subscriber fees presently available under NASD Rule 7010(s). The proposed rule change was published for notice and comment in the **Federal Register** on July 29, 2004.<sup>3</sup> The Commission received no comments on the proposal.

The Commission has reviewed carefully the proposed rule change and 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 association<sup>4</sup> and, in particular, the requirements of Section 15A(b)(5) of the Act,<sup>5</sup> which requires, among other things, that NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other

persons using any facility or system which NASD operates or controls.

The Commission notes that PostData is currently operating as a pilot. The Commission expects that Nasdaq will evaluate the fees it has established for PostData, and provide the Commission with a report of its findings before the expiration of, or extension of, the pilot period.<sup>6</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>7</sup>, that the proposed rule change (SR-NASD-2004-101) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-20376 Filed 9-8-04; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Proposed Collection; Comment Request

**AGENCY:** Federal Railroad Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirement (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on June 24, 2004 (69 FR 35421).

**DATES:** Comments must be submitted on or before October 12, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493-6292), or Ms. Debra Steward, Office of Information Technology and Productivity Improvement, RAD-20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202)

493-6139). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104-13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501-3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On June 24, 2004, FRA published a 60-day notice in the **Federal Register** soliciting comment on this ICR that the agency was seeking OMB approval. 69 FR 35421. FRA received no comments after issuing this notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507(b)-(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the information collection requirement (ICR) and the expected burden. The revised requirement is being submitted for clearance by OMB as required by the PRA.

**Title:** Railroad Communications (Formerly Radio Standards and Procedures).

**OMB Control Number:** 2130-0524.

**Type of Request:** Extension of a currently approved collection.

**Affected Public:** Railroads.

**Abstract:** The Federal Railroad Administration (FRA) amended its radio standards and procedures to promote compliance by making the regulations more flexible; to require wireless communications devices, including radios, for specified classifications of railroad operations and roadway

<sup>6</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> *See* Securities Exchange Act Release No. 50068 (July 23, 2004), 69 FR 45358.

<sup>4</sup> 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).

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

<sup>6</sup> *See* Securities Exchange Act Release No. 45270 (January 11, 2002), 67 FR 2712 (January 18, 2002) (SR-NASD-99-12).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-(a)(12).

workers; and to re-title this part to reflect its coverage of other means of wireless communications such as cellular telephones, data radio terminals, and other forms of wireless communications to convey emergency and need-to-know information. The new rule established safe, uniform procedures covering the use of radio and other wireless communications within the railroad industry.

*Annual Estimated Burden Hours:* 255,371.

*Addressee:* Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC, 20503, Attention: FRA Desk Officer.

*Comments Are Invited on the Following:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

**Authority:** 44 U.S.C. 3501–3520.

Issued in Washington, DC on September 2, 2004.

**Kathy A. Weiner,**

*Director, Office of Information Technology and Support Systems, Federal Railroad Administration.*

[FR Doc. 04–20458 Filed 9–8–04; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–18947]

#### Notice of Receipt of Petition for Decision That Nonconforming 2003–2004 BMW 5 Series Passenger Cars Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of receipt of petition for decision that nonconforming 2003–2004 BMW 5 series passenger cars are eligible for importation.

**SUMMARY:** This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2003–2004 BMW 5 series passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

**DATES:** The closing date for comments on the petition is October 12, 2004.

**ADDRESSES:** Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 am to 5 pm.) Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202) 366–3151.

#### SUPPLEMENTARY INFORMATION:

##### Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition.

At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies of Baltimore, Maryland (“JK”) (Registered Importer 90–006) has petitioned NHTSA to decide whether nonconforming 2003–2004 BMW 5 series passenger cars are eligible for importation into the United States. The vehicles which JK believes are substantially similar are 2003–2004 BMW 5 series passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2003–2004 BMW 5 series passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

JK submitted information with its petition intended to demonstrate that non-U.S. certified 2003–2004 BMW 5 series passenger cars as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2003–2004 BMW 5 series passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect*, 103 *Windshield Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch System*, 116 *Motor Vehicle Brake Fluids*, 124 *Accelerator Control Systems*, 135 *Passenger Car Brake Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Mounting*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 225 *Child Restraint Anchorage Systems*, 301 *Fuel System Integrity*, 302 *Flammability of Interior Materials*, and 401 *Interior Trunk Release*.