

that the NASD should have the authority to take action against any member that is not in capital compliance.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR–NASD–2003–74), as amended, be, and it hereby is, approved.

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. 34–48442; File No. SR–NASD–2003–98]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Clarify Reporting Requirements for Transactions Conducted Through Electronic Communications Networks

September 4, 2003.

On June 19, 2003, the National Association of Securities Dealers, Inc. (“NASD”), through its subsidiary, The Nasdaq Stock Market, Inc. (“Nasdaq”) submitted to 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 clarify the reporting requirements applicable to transactions conducted through electronic communication networks (“ECNs”). On July 11, 2003, Nasdaq submitted Amendment No. 1 to the proposal.³ The **Federal Register** published the proposal, as amended, for comment on August 4, 2003.⁴ The Commission received one comment letter supporting the proposal.⁵

Nasdaq has stated that it allows ECNs to adopt different methodologies for reporting transactions to the Automated Confirmation Transaction Service (“ACT”) in order to accommodate their varying business needs. Nasdaq believes, however, that the absence of clearly defined rules on the ACT trade reporting requirements has created some confusion for ECNs and their subscribers. Nasdaq proposed these rule changes to provide greater clarity and certainty regarding the ACT trade reporting requirements for ECNs and their subscribers. 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 association⁶ and, in particular, the requirements of section 15A(b)(6) of the Act,⁷ which requires, among other things, that the rules of a national securities association foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The Commission believes that the proposed rules will provide ECNs and subscribers with necessary guidelines to facilitate their compliance with ACT trade reporting requirements. Therefore, the Commission finds the proposed rule changes are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁸ that the proposed rule change (SR–NASD–2003–98), as amended, is approved.

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. 34–48452; File No. SR–NASD–2003–118]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change By the National Association of Securities Dealers, Inc. To Introduce Fees for Persons That Are Not NASD Members Using the Financial Information Exchange Protocol to Connect to Nasdaq

September 5, 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 July 31, 2003, 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”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. 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 is filing this proposed rule change to propose connectivity and testing fees for persons that are not NASD members wishing to use the Financial Information Exchange (“FIX”) protocol to connect to Nasdaq.³ Nasdaq proposes to implement the change to Rule 7050(d) for non-members immediately upon Commission approval, and to implement the change to Rule 7010(f) for non-members on the later of August 25, 2003, or the date of Commission approval of the proposed rule change.

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

7000. Charges For Services and Equipment

Rule 7010. System Services

- (a)–(e) No change.
- (f) Nasdaq Workstation™ Service
- (1) No change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ Nasdaq is also submitting a proposed rule change to introduce these fees for NASD members. See Securities Exchange Act Release No. 48387 (August 21, 2003), 68 FR 51619 (August 27, 2003) (SR–NASD–2003–117).

⁸ 15 U.S.C. 78(b)(2).

⁹ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Letter from John M. Yetter, Associate General Counsel, Nasdaq to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated July 10, 2003 (“Amendment No. 1”). Nasdaq filed Amendment No. 1 to revise portions of the proposed rule text contained in the original filing.

⁴ Securities Exchange Act Release No. 48239 (July 28, 2003), 68 FR 45871.

⁵ See Letter from William O'Brien, Chief Operating Officer, Brut, LLC to the Commission, dated August 25, 2003.

⁶ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78o–3(b)(6).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30–3(a)(12).

(2) The following charges shall apply for each [CTCI] subscriber *using CTCI and/or FIX*:

Options	Price
Option 1: Dual 56kb lines (one for redundancy), [and] single hub and router, <i>and optional single FIX port</i> .	\$1275/month.
Option 2: Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), [and] dual routers (one for redundancy), <i>and optional single FIX port</i> .	\$1600/month.
Option 3: Dual T1 lines (one for redundancy), dual hubs (one for redundancy), [and] dual routers (one for redundancy), <i>and optional single FIX port</i> . Includes base bandwidth of 128kb.	\$8000/month (<i>CTCI or CTCI/FIX lines</i>). \$4000/month (<i>FIX-only lines</i>).
FIX Port Charge	\$300/port/month.
Option 1, 2, or 3 with Message Queue software enhancement	Fee for Option 1, 2, or 3 (including any Bandwidth Enhancement Fee) plus 20%.
Disaster Recovery Option:	\$975/month.
Single 56kb line with single hub and router <i>and optional single FIX port</i> . (For remote disaster recovery sites only).	
Bandwidth Enhancement Fee (for T1 subscribers only)	\$600/month per 64kb increase above 128kb T1 base.
Installation Fee	\$2000 per site for dual hubs and routers; \$1000 per site for single hub and router.
Relocation Fee (for the movement of TCP/IP-capable lines within a single location).	\$1700 per relocation.

(g)–(s) No change.

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7050. Other Services

(a)–(c) No change.

(d) Nasdaq Testing Facility

(1) Subscribers that conduct tests of their computer-to-computer interface (CTCI), NWII application programming interface (API), *Financial Information Exchange (FIX) interface*, or market data vendor feeds through the Nasdaq Testing Facility (NTF) shall pay the following charges:

\$285/hour—For an Active Connection for CTCI/NWII API/*FIX* testing during the normal operating hours of the NTF;

\$75/hour—For an Idle Connection for CTCI/NWII API/*FIX* testing during the normal operating hours of the NTF, unless such an IdleConnection is over a dedicated circuit;

No charge—For an Idle Connection for CTCI/NWII API/*FIX* testing if such an Idle Connection is over a dedicated circuit during the normal operating hours of the NTF;

\$333/hour—For CTCI/NWII API/*FIX* testing (for both Active and Idle Connections) at all times other than the normal operating hours of the NTF.

(2) (A) An “Active Connection” commences when the user begins to send and/or receive a transaction to and from the NTF and continues until the earlier of disconnection or the commencement of an Idle Connection.

(B) An “Idle Connection” commences after a Period of Inactivity and continues until the earlier of disconnection or the commencement of an Active Connection. If a Period of Inactivity occurs immediately after subscriber’s connection to the NTF is established and is then immediately followed by an Idle Connection, then such Period of Inactivity shall also be deemed a part of the Idle Connection.

(C) A “Period of Inactivity” is an uninterrupted period of time of specified length when the connection is open but the NTF is not receiving from or sending to subscriber any transactions. The length of the Period of

Inactivity shall be such period of time between 5 minutes and 10 minutes in length as Nasdaq may specify from time to time by giving notice to users of the NTF.

(3) The foregoing hourly fees shall not apply to market data vendor feed testing, or testing occasioned by:

(A) new or enhanced services and/or software provided by Nasdaq;

(B) modifications to software and/or services initiated by Nasdaq in response to a contingency; or

(C) testing by a subscriber of a Nasdaq service that the subscriber has not used previously, except if more than 30 days have elapsed since the subscriber commenced the testing of such Nasdaq service.

(4) Subscribers that conduct CTCI/API/*FIX* or market data vendor feed tests using a dedicated circuit shall pay a monthly fee, in addition to any applicable hourly fee described in section (d)(1) above, in accordance with the following schedule:

Service	Description	Price
NTF Market Data	Test Market Data Vendor Feed over a 56kb dedicated circuit.	\$1,100/circuit/month.
NTF NWII API	NWII API service to an onsite test SDP over a 56kb dedicated circuit.	\$1,100/circuit/month.
NTF CTCI/ <i>FIX</i>	CTCI <i>and/or FIX</i> service over a 56kb dedicated circuit	\$1,100/circuit/month.
NTF Test Suite	NWII API service, <i>FIX</i> and CTCI service over two 56kb circuits (128 kb).	\$1,800/2 circuits/month.
NTF Circuit Installation	Installation of any service option including SDP configuration.	\$700/circuit/installation.

(5) New NTF subscribers that sign a one-year agreement for dedicated testing service shall be eligible to receive 90-calendar days free dedicated testing service.

(6) "New NTF subscribers" are subscribers that

(A) have never had dedicated testing service; or

(B) have not had dedicated testing service within the last 6 calendar months.

(e) 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 currently offers market participants and other Nasdaq subscribers two messaging protocols for communicating with Nasdaq systems: Computer-to-computer interface ("CTCI") and application programming interface ("API"). Effective August 25, 2003, Nasdaq expanded the connectivity options available to its subscribers by introducing the FIX protocol as a means of accessing SuperMontage. The FIX protocol was first developed in 1992, and since that time has become the dominant protocol for messaging among equity market participants. FIX is now used by over 50% of all U.S. firms in the equity securities business, and its users include market makers and other broker-dealers, institutional investors, electronic communications networks ("ECNs"), and national securities exchanges.

Nasdaq proposes to amend Rule 7010(f) to reflect the various pricing options that will be available to firms that connect through FIX. Firms that already have dedicated CTCI circuits will be able to use FIX over their existing circuits. Thus, these firms will be able to begin using FIX immediately, without having to incur the costs or delays associated with installation of

new circuits. Moreover, the charges for circuits used to support both FIX and CTCI will be the same as the current charges for CTCI-only circuits (although a firm that increases its bandwidth usage as a result of using FIX may have to install additional circuits or pay the existing bandwidth enhancement fee of \$600 per 64 kilobit per second increase if it exhausts its existing available bandwidth).⁴ However, Nasdaq will assess a "port charge" of \$300 per month for each port (*i.e.*, a connection to a server that operates off of the circuit) that uses FIX, with the first port provided free of charge to firms with direct connections. Each customer will determine the number of ports that it requires, based on its message traffic needs.

A firm that does not currently have CTCI circuits will be able to obtain circuits to support both CTCI and FIX at the same prices that currently apply to CTCI circuits, or will be able to obtain dual 128 kb circuits to support FIX only at a reduced rate of \$4,000 per month (compared with the \$8,000 per month charge of 128 kb circuits that support CTCI and FIX). The lower fee reflects the lower costs to Nasdaq of supporting FIX (as compared with CTCI), as well as the more limited range of functionality that will be accessible to firms through FIX.⁵ Firms will also be able to connect to Nasdaq indirectly through service bureaus and third-party private networks that provide the option of FIX connectivity to their subscribers. In such cases, Nasdaq will charge for FIX or CTCI/FIX circuits if any must be supplied by Nasdaq to establish connectivity, and will also charge the end user a port charge of \$300 per month for each port that it requires, based on its message traffic needs.

Firms wishing to use FIX were able to begin testing FIX connectivity during the month of August 2003. Accordingly, Nasdaq also proposes to amend Rule 7050(d), which lists the fees for the Nasdaq Testing Facility ("NTF"). The NTF will be available for testing FIX connectivity at the same rates that currently apply to CTCI/API testing. The fees for testing without a dedicated testing circuit are: (i) \$285 per hour for

an active connection during the normal operating hours of the NTF, (ii) \$75 per hour for an idle connection during normal operating hours; and (iii) \$333 per hour for an active or idle connection at times other than normal operating hours. In addition, firms have the option of obtaining dedicated 56kb testing circuits at a rate of \$1,100 for one CTCI/FIX circuit or \$1,800 for two circuits usable for API, CTCI, and FIX. Hourly fees also apply to testing through dedicated circuits, with the exception of the charge for idle connections during normal operating hours. Pursuant to Rule 7050(d)(3)(A), however, the hourly fees will not be applied to testing conducted prior to August 25, 2003. Moreover, pursuant to Rule 7050(d)(3)(C), the hourly fees will not be applied thereafter to a new FIX subscriber until 30 days after it commences testing.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,⁶ including Section 15A(b)(5) of the Act,⁷ which requires that the rules of the NASD 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 the NASD operates or controls. By adopting a pricing structure that is responsive to subscriber needs and market demands, the proposed rule supports efficient use of existing systems and ensures that the charges associated with such use are allocated equitably.

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.

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

⁴ The term "bandwidth" refers to the amount of data that can be transmitted over a circuit in one second. Accordingly, bandwidth enhancements allow a subscriber to send and receive a greater volume of data over a circuit.

⁵ CTCI and API can be used to access a range of Nasdaq systems, including SuperMontage, ACT and Nasdaq InterMarket. At the time of its introduction in late August 2003, however, FIX may be used solely to access SuperMontage. Based on user demand, Nasdaq will evaluate whether to make additional Nasdaq functionality available through FIX in the future.

⁶ 15 U.S.C. 78o-3.

⁷ 15 U.S.C. 78o-3(b)(5).

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization 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 No. SR-NASD-2003-118 and should be submitted by September 29, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48450; File No. SR-NASD-2003-105]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Implement a Six-Month Pilot Program Establishing Fees for Written Interpretations of Nasdaq Listing Rules

September 4, 2003.

On July 3, 2003, 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 implement a six-month pilot program to establish fees for written interpretations of Nasdaq listing rules.³ Notice of the proposed rule change was published for comment in the **Federal Register** on August 4, 2003.⁴ No comments were received on the proposed rule change. This order approves the proposed rule change.

Nasdaq currently provides written interpretations regarding the application of its listing rules to particular sets of facts, at no cost, to issuers who request them. According to Nasdaq, the transactions for which issuers are seeking interpretations have grown in complexity and have resulted in its staff spending an increased amount of time on interpretation letters. In order to address the associated costs, Nasdaq proposes to charge, on a six-month pilot basis, fees for providing written interpretations. Under the pilot, Nasdaq would charge \$2,000 for interpretation letters, with a response generally provided within four weeks. Additionally, Nasdaq would charge a \$10,000 fee for expedited interpretation letters, with a response generally provided within one to four weeks. Nasdaq would not impose fees for requests related to initial listing on Nasdaq or requests for an exception from NASD Rule 4350(i)(2). The Nasdaq Board of Directors will also have the discretion to defer or waive all or any part of the written interpretation fee. Nasdaq has proposed to make the pilot program effective on the latter of October 1, 2003 or the date of Commission approval.

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 association.⁵ Specifically, the Commission finds that the proposal is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission notes that Nasdaq submitted two amendments to its Form 19b-4 to indicate the review and approval of the proposed rule change by the NASD Board of Governors. The amendments were technical in nature and did not require notice and comment. See letters from John D. Nachmann, Senior Attorney, Nasdaq to Katherine England, Assistant Director, Commission, dated July 23, 2003 and August 1, 2003.

⁴ See Securities Exchange Act Release No. 48236 (July 28, 2003), 68 FR 45865.

⁵ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

consistent with Section 15A(b)(5) of the Act,⁶ which requires, among other things, that the rules of a national securities association provide for the equitable allocation of reasonable dues, fees, and other charges among members, issuers and other persons. The Commission believes that the written interpretation fee is reasonably related to the purpose of covering the costs of providing written interpretations and is fairly allocated among issuers. The Commission also notes that the fee is being implemented on a six-month pilot basis and that Nasdaq will evaluate its impact on issuers at the end of the pilot period and report to the Commission its findings.

Finally, the rule proposal provides the Nasdaq Board of Directors or its designee with the discretion to defer or waive all or any part of the written interpretation fee in order to address exceptional situations where the payment of a fee for an interpretation letter would be inequitable under the circumstances (e.g., in cases of economic hardship). The Commission notes that such discretion may not be used in generally applicable or frequently-replicated situations.⁷

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁸ that the proposed rule change (File No. SR-NASD-2003-105) be, and it hereby is, approved, as a six-month pilot, through March 31, 2004.

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

Margaret H. McFarland
Deputy Secretary

[FR Doc. 03-23288 Filed 9-11-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48456; File No. SR-PCX-2003-45]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Processing of Market Orders Prior to the Opening of the Primary Market

September 8, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

⁶ 15 U.S.C. 78o-3(b)(5).

⁷ See letter from Annette L. Nazareth, Director, Division of Market Regulation, Commission, to T. Grant Callery, Executive Vice President and General Counsel, NASD (March 27, 2003).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

⁸ 17 CFR 200.30-3(a)(12).