

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

Because the foregoing proposed rule change does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and
- (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² 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.

Nasdaq has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay contained in Rule 19b-4(f)(6).¹³ The Commission believes waiving the five-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. Such waiver will allow the reduction in fees reflected in the proposal to be made available on an uninterrupted basis. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹⁴

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-2003-132 and should be submitted by September 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48387; File No. SR-NASD-2003-117]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Introduce Fees for NASD Members Using the Financial Information Exchange Protocol To Connect to Nasdaq

August 21, 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. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change 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 is filing this proposed rule change to propose connectivity and testing fees for NASD members wishing to use the Financial Information Exchange ("FIX") protocol to connect to Nasdaq.⁵ Nasdaq proposes to implement the change to Rule 7050(d) on August 1, 2003, and the change to Rule 7010(f) on August 25, 2003.

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.

(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>	\$1,275/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>	\$1,600/month.
Option 3:	

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on

efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ Nasdaq is also submitting a proposed rule change to introduce these fees for non-members. See File No. SR-NASD-2003-118 (July 31, 2003).

Options	Price
Dual T1 lines (one for redundancy), dual hubs (one for redundancy), [and] dual routers (one for redundancy), and optional single FIX port Includes base bandwidth of 128kb.	\$8,000/month (CTCI or CTCI/FIX lines) \$4,000/month (FIX-only lines).
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: Single 56kb line with single hub and router and optional single FIX port. (For remote disaster recovery sites only.)	\$975/month.
Bandwidth Enhancement Fee (for T1 subscribers only)	\$600/month per 64kb increase above 128kb T1 base.
Installation Fee	\$2,000 per site for dual hubs and routers. \$1,000 per site for single hub and router.
Relocation Fee (for the movement of TCP/IP-capable lines within a single location).	\$1,700 per relocation.

(g)–(s) No change.
* * * * *
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 Idle Connection 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/FIX	CTCI and/or FIX service over a 56kb dedicated circuit.	\$1,100/circuit/month.
NTF Test Suite	NWII API service, FIX and CTCI service over two 56kb circuits (128kb).	\$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.

* * * * *

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 will expand 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. Nasdaq represents that 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 Nasdaq proposes to make available to firms that connect through FIX. Firms that already have dedicated CTCI circuits would be able to use FIX over their existing circuits. Thus, these firms would 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 would 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 might 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).⁶ However, Nasdaq would 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 would determine the number of ports that it requires, based on its message traffic needs.

A firm that does not currently have CTCI circuits would be able to obtain circuits to support both CTCI and FIX at the same prices that currently apply to CTCI circuits, or would 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 would be accessible to firms through FIX.⁷ Firms would 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 would charge for FIX or CTCI/FIX circuits if any must be supplied by Nasdaq to establish connectivity, and would 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 would be 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 would be available for testing FIX connectivity at the same rates that currently apply to CTCI/API testing. The fees for testing without a dedicated

⁶ 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.

⁷ 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 will provide access solely to SuperMontage. Based on user demand, Nasdaq will evaluate whether to make additional Nasdaq functionality available through FIX in the future.

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 would not be applied to testing conducted prior to August 25, 2003. Moreover, pursuant to Rule 7050(d)(3)(C), the hourly fees would 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,⁸ in general, and with Section 15A(b)(5) of the Act,⁹ in particular, 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 NASD operates or controls. The proposed fees for FIX connectivity and testing are similar in structure and dollar amount to existing fees for CTCI and API connectivity and testing.

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

The proposed rule change has become immediately effective pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁰ and subparagraph (f)(2) of Rule 19b-4 thereunder,¹¹ in that it establishes or

⁸ 15 U.S.C. 78o-3.

⁹ 15 U.S.C. 78o-3(b)(5).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the 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 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-2003-117 and should be submitted by September 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48379; File No. SR-NASD-2003-109]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Changes in Fingerprint Processing Fees Contained in Schedule A of the NASD By-Laws

August 20, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 10, 2003, the National Association of Securities Dealers, Inc. ("NASD") 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 NASD. On August 7, 2003, NASD filed an amendment to the proposal.³ 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

NASD is proposing to amend Section (4)(b) of Schedule A of NASD's By-Laws to: (1) Increase the \$10.00 charge for each set of fingerprints submitted by a member to NASD for processing to \$13.00; (2) establish a \$13.00 charge to be paid to NASD for posting each set of fingerprint results and identifying information that have been processed through another self-regulatory organization ("SRO") and submitted by a member to NASD; and (3) substitute the term "fingerprints" for "fingerprint cards." NASD intends for the fees to become operative on July 15, 2003. Below is the text of the proposed rule change. Proposed new language is in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, to Jonathan G. Katz, Secretary, Commission, dated August 6, 2003. ("Amendment No. 1"). In Amendment No. 1, NASD substituted in the first paragraph of Section I of Exhibit 1 of the filing the word "fingerprints" for the phrase "fingerprint images and identifying information" to make the introductory language of Section I consistent with the proposed rule text. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on August 7, 2003.

italics; proposed deletions are in brackets.⁴

* * * * *

Schedule A to NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of NASD shall be determined on the following basis.

Sections 1 through 3 No change.

Section 4—Fees

(a) No change.

(b) NASD shall assess each member a fee of:

(1) through (3) No change.

(4) [\$10.00] *\$13.00 for processing and posting to the CRD system each set of fingerprints* [each fingerprint card] submitted by the member to NASD, plus any other charge that may be imposed by the United States Department of Justice for processing [such] *each set of fingerprints* [card; and].

(5) *\$13.00 for processing and posting to the CRD system each set of fingerprint results and identifying information that have been processed through another self-regulatory organization and submitted by a member to NASD.*

[(5)] (6) \$30.00 annually for each of the member's registered representatives and principals for system processing.

[(6)] (7) 10% of a member's final annual renewal assessment or \$100, whichever is greater, with a maximum charge of \$5,000, if the member fails timely to pay the amount indicated on its preliminary renewal statement.

(c) through (l) 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, NASD included statements concerning the purpose of and the 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. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

⁴ At the NASD's request, the Commission made certain non-substantive, typographical changes to the proposed rule text to make it consistent with the current NASD rule text. Telephone conference between Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, and Christopher B. Stone, Special Counsel, Division of Market Regulation, Commission (July 22, 2003).

¹² 17 CFR 200.30-3(a)(12).