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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–016 and should be submitted on or before March 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–634 Filed 2–15–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51170; File No. SR–NASD–2005–002]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Establish Fees for Connectivity to the Nasdaq Market Center

February 9, 2005.

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 January 7, 2005, 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. On January 28, 2005, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] Pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(1), (2), and (5) thereunder,[5] Nasdaq has designated this proposal in part as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, in part as establishing or changing a due, fee, or other charge, and in part as a proposal effecting a change in an existing order-entry or trading system of a self-regulatory organization, which renders the proposed rule change effective immediately upon filing. 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 the Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010 to establish fees for new options for connecting to the Nasdaq Market Center and is filing a related Member Alert and Head Trader Alert. Nasdaq will implement the proposed rule change immediately.

The text of the proposed rule change, and the texts of the related Member Alert and Head Trader Alert, that were attached as exhibits to the proposal, are available on the NASD's Web site (*http://www.nasd.com*), at the NASD's Office of the Secretary, and at the Commission's Public Reference Room.

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 Information Exchange

Nasdaq offers market participants and other Nasdaq subscribers a choice of messaging protocols for communicating with Nasdaq systems, with the goal of allowing firms to select the connectivity options that best suit their needs. The protocol options currently available to firms include the Financial Information Exchange (''FIX'') protocol, the computer-to-computer interface (''CTCI'') protocol, and an application programming interface (''API'') protocol that requires the use of a Service Delivery Platform (''SDP''), a hardware unit located at the subscriber's premises. Although the SDP/API protocol has offered distinct advantages in terms of functional support for quoting market participants and other firms with high volumes of message traffic, the need for firms to install and maintain one or more SDPs has resulted in comparatively higher communications and infrastructure costs for firms using SDP/API. As a result, Nasdaq has developed the Nasdaq Information Exchange or ''QIX,'' a new proprietary protocol that does not require use of an SDP. Nasdaq believes that QIX will offer the benefits of the current API protocol but at a significantly reduced cost to its users.

The QIX protocol is being made available for use in production immediately. During a period of approximately ten months thereafter, Nasdaq will work with users of the SDP/API protocol to transition them to QIX, FIX, and/or CTCI. Nasdaq intends to sunset the SDP/API protocol and connectivity by the end of October 2005 (or such later date as Nasdaq may announce to market participants); all users of that protocol will be required to transition by that time. The sunset of SDP/API will not affect the operation of any of the rules governing trading through the Nasdaq Market Center (*e.g.*, the 4700 Series of the NASD Rules).

In contrast to the SDP/API protocol, which requires market participants to use, and pay Nasdaq for the use of, a telecommunications network supplied by MCI pursuant to an agreement with Nasdaq, QIX will offer market participants choice in the establishment of connections to Nasdaq. As is currently the case for FIX, market participants may use a range of third-party communications providers, may establish connections to service bureaus that in turn connect to Nasdaq, or may take advantage of additional modes of telecommunications that may become available to the financial sector in the future. As a result, member firms will benefit from the forces of competition, choice, and innovation when selecting telecommunications services for the purpose of connecting to Nasdaq's facilities through QIX and FIX, rather than receiving connectivity as a vertically integrated component of Nasdaq's facilities.

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Nasdaq added representations with respect to monitoring usage traffic on dedicated and non-dedicated FIX servers and steps it would take to provide a high level of support across all other FIX servers, and replaced the text of the original filing in its entirety.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(1), (2), and (5).

Nasdaq will assess a basic charge of $1,000 for each pair of ''ports'' that uses QIX.[6] A port is a discrete right of access to Nasdaq's trading facility using the QIX protocol. Ports, which are analogous to a ''logon'' in the SDP/API environment, are provided in pairs to increase throughput performance by separating unsolicited message streams from quote/order entry and response streams. The number of port pairs that a particular firm will require will depend on the volume of its message traffic. The direct connection for electronic communications networks (''ECNs'') that Nasdaq recently established [7] will continue to be available, at the same charge of $1,000 per port pair per month. Upon the sunset of the SDP/API protocol, ECNs will no longer be able to connect to Nasdaq using an SDP, so the use of a direct connection will become mandatory for ECNs quoting in Nasdaq. Subscribers will also be able to receive a single port that is used solely to receive unsolicited messages (such as drop copy execution reports) at a cost of $750 per month.[8]

QIX, unlike the SDP/API, will not support the risk management function of Nasdaq's trade reporting service, but this function will continue to be available through the Nasdaq Workstation. In addition, QIX will not provide a market data feed, so firms that currently use the SDP/API for market data will need to subscribe separately to the appropriate market data feeds. Nevertheless, Nasdaq expects that the overall cost of QIX to support a given level of usage will be significantly lower than the cost of SDP/API to support an equivalent level. Nasdaq also expects that the effort required by firms to transition from SDP/API to QIX will be quite manageable by firms, given the similarities between the two protocols. To assist in the transition, SDP/API and CTCI users will be provided with the ability to segregate unused bandwidth on T1 circuits supporting these existing connections to establish temporary QIX and/or FIX connections while firms await installation of such new circuits as may be required to support their planned QIX and/or FIX usage. In addition, pursuant to NASD Rule 7050(d)(3), subscribers that are transitioning from SDP/API to QIX or FIX will be permitted to use the Nasdaq Testing Facility to test QIX or FIX functionality free of charge for a 90-calendar day period. Nasdaq has been providing notice to all market participants that will be affected by the sunset of SDP/API through direct contacts and through widely disseminated written notices, including Nasdaq Head Trader Alert (2004–105), which was disseminated in July 2004,[9] and Nasdaq Head Trader Alert (2005–009) and an NASD Member Alert, which are being disseminated in conjunction with this filing.[10] To further ensure the availability of this information, Nasdaq is filing the NASD Member Alert and the new Head Trader Alert as Exhibits to this proposed rule change.

FIX Servers

In response to requests from market participants, Nasdaq is also offering users of the FIX protocol the option of using FIX through a dedicated server (also known as a ''FIX engine''). Currently, Nasdaq's FIX servers are not dedicated to a specific firm, but rather a single FIX server may carry message traffic from multiple firms. Nasdaq carefully monitors usage to ensure that capacity is adequate to handle message traffic. Nevertheless, in response to the request of several firms, Nasdaq is proposing to provide the option of a dedicated server at a cost of $1,000 per server per month to reflect Nasdaq's additional costs of providing this service. Nasdaq represents that it will carefully monitor message traffic on all dedicated and non-dedicated servers to ensure that dedicated servers will not provide firms that receive them with any advantage over other market participants in terms of the speed with which messages are transmitted to and from the Nasdaq Market Center. Specifically, Nasdaq represents that it will install additional non-dedicated servers whenever necessary to provide a high level of support across all FIX servers.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[11] in general, and Section 15A(b)(5) [12] of the Act, 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. Nasdaq believes the proposed rule change would provide market participants with a choice of several cost-effective methods to connect to Nasdaq's facilities, including QIX, a new API protocol that will offer substantial cost savings in comparison with the current SDP/API protocol. Nasdaq represents that fees for access services are equitably allocated based on the level of message traffic between Nasdaq and each firm.

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, 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and subparagraphs (f)(1), (2), and (5) of Rule 19b–4 thereunder, because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, establishes or changes a due, fee, or other charge, and effects a change in an existing order-entry or trading system.[14] 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

[6] A subscriber that seeks to track its proprietary quotes separately from customer orders that are reflected in its quotes will have the option of receiving a third proprietary quote information port for that purpose at no additional charge. The Commission notes that in a subsequent filing (NASD–2005–016), Nasdaq proposed to revise the QIX fees. The fee for a QIX port pair (including an ECN direct connection port pair) would be increased from $1,000 to $1,200 per month, and the fee for an unsolicited message port would be increased from $750 to $1,000 per month. *See* Securities Exchange Act Release No. 51171 (February 9, 2005).

[7] *See* Securities Exchange Act Release No. 50647 (November 8, 2004), 69 FR 65667 (November 15, 2004) (SR–NASD–2004–158).

[8] Because Nasdaq's charges are assessed against the Nasdaq market participant rather than telecommunications providers or service bureaus that act as intermediaries, the fees established by this proposed rule change apply only to NASD members.

[9] *See http://www.nasdaqtrader.com/dynamic/newsindex/headtraderalerts_2004.stm.*

[10] *See http://www.nasdaqtrader.com/dynamic/newsindex/headtraderalerts_2005.stm* and *http://www.nasd.com/web/idcplg?IdcService=SS_GET_PAGE&nodeId=1193&ssSourceNodeId=546.* The Head Trader Alerts and Member Alert also describe Nasdaq's plans to replace the current Nasdaq Workstation II with a new Nasdaq Workstation by October 2005. Nasdaq will submit a separate proposed rule change to establish fees for the new Nasdaq Workstation.

[11] 15 U.S.C. 78*o*–3.

[12] 15 U.S.C. 78*o*–3(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(1), (2), and (5).

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.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2005–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2005–002. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–002 and should be submitted on or before March 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–636 Filed 2–15–05; 8:45 am]

BILLING CODE 8010–01–P

[15] *See* 15 U.S.C. 78s(b)(3)(C). For purposes of calculation the 60-day abrogation period, the Commission considers the period to commence on January 28, 2005, the date Nasdaq filed Amendment No. 1.

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51181; File No. SR–NASD–2004–171]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to Rule 2340 (Customer Account Statements)

February 10, 2005.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 2, 2004, 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 February 2, 2005 NASD filed Amendment No. 1 to the proposed rule change.[4] 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 Rule 2340 to require that account statements include a statement that advises each customer to promptly report any inaccuracy or discrepancy in that person's account to his or her introducing firm and clearing firm (where these are different firms) and to re-confirm any oral communications in writing to further protect the customer's rights, including rights under the Securities Investor Protection Act (''SIPA''). Below is the text of the proposed rule change. Proposed new language is in italics.

* * * * *

2340. Customer Account Statements

(a) General

Each general securities member shall, with a frequency of not less than once every calendar quarter, send a statement of account (''account statement'') containing a description of any securities positions, money balances, or account activity to each customer whose account had a security position, money balance, or account activity during the period since the last such statement was sent to the customer. *In addition, each general securities member shall include in the account statement a statement that advises the customer to report promptly any inaccuracy or discrepancy in that person's account to his or her brokerage firm. (In cases where the customer's account is serviced by both an introducing and clearing firm, each general securities member must include in the advisory a reference that such reports be made to both firms.) Such statement also shall advise the customer that any oral communications should be re-confirmed in writing to further protect the customer's rights, including rights under the Securities Investor Protection Act (SIPA).*

(b) through (d) 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, NASD 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. NASD 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

(a) Purpose

On May 25, 2001, the U.S. General Accounting Office (''GAO'') issued *Securities Investor Protection: Steps Needed to Better Disclose SIPC Policies to Investors* (GAO–01–653). In that report, the GAO made recommendations to SEC and the Securities Investor

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.19b–4.

[4] In Amendment No. 1, NASD filed a partial amendment to change the proposed effective date from 30 days following Commission approval to 180 days following Commission approval. NASD also changed the reference to ''each customer'' to ''the customer'' in the sentence proposed to be added as the second sentence to paragraph (a) of Rule 2340.