

decrease for NASD member firms<sup>7</sup> and now proposes to offer this fee reduction to non-NASD members that use CTCI.<sup>8</sup>

## 2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,<sup>9</sup> in general, and with Section 15A(b)(5) of the Act,<sup>10</sup> 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.

### B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change does not impose 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. 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. 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 also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2003-46 and should be submitted by April 29, 2003.

<sup>7</sup> See *supra* note 4.

<sup>8</sup> Nasdaq also proposes to delete a footnote from NASD Rule 7010(f) that describes pricing changes relating to x.25 CTCI circuits, which are no longer in use.

<sup>9</sup> 15 U.S.C. 78o-3.

<sup>10</sup> 15 U.S.C. 78o-3(b)(5).

## IV. Commission's Finding and Order Granting Accelerated Approval of Proposed Rule Changes

After careful review the Commission finds that the proposed rule change and Amendment No. 1 are consistent with the requirements of Section 15A(b)(5) of the Act<sup>11</sup> because it provides for the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using any facility or systems which the association operates.<sup>12</sup> Specifically, the proposed fee reduction makes CTCI bandwidth enhancements more economical to all market participants.

The Commission notes that Nasdaq has also submitted a proposed rule change to make an identical decrease to the bandwidth enhancement fee paid by NASD members that use CTCI.<sup>13</sup> Although this proposal became effective upon filing with the Commission on March 20, 2003, Nasdaq has proposed to delay the implementation of the fee decrease for NASD members until April 1, 2003. Similarly, Nasdaq has proposed to implement the fee decrease on April 1, 2003 for non-NASD members who use CTCI. Therefore, Nasdaq has requested that the Commission find good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after publication in the **Federal Register**. The Commission believes that granting accelerated approval of the proposed rule change will allow for the equitable treatment of members and non-NASD members by allowing Nasdaq to implement the fee reduction for both NASD members and non-NASD members on April 1, 2003. Accordingly, the Commission finds good cause, consistent with Section 15A(b)<sup>14</sup> and Section 19(b)(2) of the Act<sup>15</sup> to approve the proposed rule change, as amended, on an accelerated basis.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-NASD-2003-46) and Amendment No. 1 thereto are

<sup>11</sup> 15 U.S.C. 78o-3(b)(5).

<sup>12</sup> 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).

<sup>13</sup> See *supra* note 4.

<sup>14</sup> 15 U.S.C. 78o-3(b).

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

<sup>16</sup> *Id.*

hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-8443 Filed 4-7-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47612; File No. SR-NASD-2003-54]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. To Modify Nasdaq Test Facility Pricing Under Rule 7050 for Persons Who Are Not NASD Members

April 1, 2003.

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> notice is hereby given that on March 24, 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. On April 1, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify Nasdaq Test Facility pricing under Rule 7050 for persons that are not NASD members.<sup>4</sup> Nasdaq proposes to implement the proposed rule change on April 1, 2003. The text of the proposed rule change is below. Proposed new

<sup>17</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> In Amendment No. 1, Nasdaq requested accelerated approval of the proposed rule change. See Letter dated March 31, 2003, from Alex Kogan, Associate General Counsel, Nasdaq to Katherine England, Assistant Director, Division of Market Regulation, Commission.

<sup>4</sup> Nasdaq is also submitting an identical proposed rule change applicable to members. See SR-NASD-2003-53.

language is in *italics*; proposed deletions are in [brackets].

\* \* \* \* \*

**7050. Other Services**

- (a) No change.
- (b) No change.
- (c) No change.
- (d) Nasdaq Testing Facility [(NTF)]

(1) Subscribers that conduct tests of their computer-to-computer interface (CTCI), NWII application programming interface (API), or market data vendor feeds through the Nasdaq Testing Facility (NTF) [of The Nasdaq Stock Market, Inc. (Nasdaq)] shall pay the following charges:

\$285/hour—For an *Active Connection* for CTCI/NWII API testing [between 9 a.m. and 5 p.m. E.T. on business days] *during the normal operating hours of the NTF*;

\$75/hour—For an *Idle Connection* for CTCI/NWII API 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 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 testing (for both *Active and Idle Connections*) at all [other] times *other than the normal operating hours of the NTF* [on business days, or on weekends and holidays].

(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) renew or enhanced services and/or software provided by Nasdaq;[or]

(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.

([3]4) Subscribers that conduct CTCI/API 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	[Proposed] Price
NTF Market Data .....	Test Market Data Vendor Feeds 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 .....	CTCI service over a 56kb dedicated circuit .....	\$1,100/circuit/month.
NTF Test Suite .....	NWII API service and CTCI service over two 56kb circuits (128 kb) ...	\$1,800/2 circuits/month.
NTF Circuit .....	Installation of any service option including SDP configuration .....	\$700/circuit/installation.

([4]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.

([5]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.

\* \* \* \* \*

**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

The proposed rule change seeks to make certain modifications to the pricing of testing services provided through the Nasdaq Test Facility (“NTF”). The objectives of the pricing changes are to reduce barriers to entry for new Nasdaq subscribers and to address feedback from subscribers regarding current test fees. In some instances, the current charges are not cost efficient for subscribers, and as a consequence, firms may choose not to test through NTF or elect not to connect to Nasdaq’s systems at all. The proposed rule change seeks to encourage subscribers to make greater use of Nasdaq services.

The proposed rule distinguishes between active and idle connections to the NTF. An active connection is in effect while transactions are actually being transmitted and for a brief period of inactivity thereafter. The existing hourly rate (\$285 per hour) remains

unchanged with respect to the times when the connection is active during the NTF’s normal operating hours. However, if no transactions are being transmitted over an open connection, then, after a certain period of inactivity, that connection would be deemed idle and a newly established lower rate (\$75 per hour) will apply. Initially, the period during which a connection needs to remain inactive before it will be deemed idle will be 10 minutes. However, Nasdaq reserves the right to adjust this time within a range of 5 to 10 minutes by giving notice of the change to NTF subscribers. The idle connection rate will not apply outside of NTF’s normal operating hours, when the existing rate (\$333 per hour) remains unchanged for both active and idle connections.

The proposed rule also eliminates idle connection charges during the NTF’s normal operating hours for NTF subscribers with dedicated circuit connections and waives hourly charges during the times over an initial 30-day period when a subscriber is using NTF

to test a Nasdaq service that the subscriber has not used previously.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>5</sup> including section 15A(b)(5) of the Act,<sup>6</sup> 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 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-2003-54 and should be submitted by April 29, 2003.

## V. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, 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, and, in particular, the requirements of section 15A(b)(5) of the Act,<sup>7</sup> 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. The Commission believes that the proposed new pricing structure should provide users with more flexible and economically efficient access to the NTF. Additionally, the Commission notes that the proposed pricing structure is identical to that proposed to be applied to NASD members.<sup>8</sup> The Commission further finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. Accelerated approval is appropriate in that it will ensure that persons who are not NASD members receive the benefits of a more flexible pricing structure for use of the NTF as soon as possible.

## VI. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-NASD-2003-54) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-8520 Filed 4-7-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47603; File No. SR-NSCC-2003-02]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Creating New Cost Basis Reporting Service

March 31, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> notice is hereby given that on January 24, 2003, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change creates a new Cost Basis Reporting Service ("CBRS") that will facilitate the automated exchange of cost basis information regarding a customer account transfer.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.<sup>2</sup>

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by NSCC.

<sup>5</sup> 15 U.S.C. 78o-3.

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

<sup>7</sup> 15 U.S.C. 78o-3(5).

<sup>8</sup> See SR-NASD-2003-53, *supra*, n. 4.

<sup>9</sup> 15 U.S.C. 78s(b)(2).