

the charges that it assesses for connectivity. Thus, the extranet becomes a connectivity service provider both to Nasdaq and FIX users, and is paid by each accordingly. In addition, Nasdaq assesses the end user a port charge of \$300 per month for each port (*i.e.*, each connection to a server) that uses FIX. Each firm determines the number of ports that it requires, based on its message traffic needs.

Because FIX connectivity through extranets has proven to be the preferred method, Nasdaq has decided to phase out the other options that currently exist. Accordingly, after January 1, 2004, Nasdaq will no longer offer new subscribers that are NASD members the option of using FIX through CTCI or FIX-only circuits.<sup>5</sup> This comparable rule change for non-members will take effect upon approval by the Commission. Existing subscribers will be permitted to continue to use their circuits at current prices. Nasdaq expects that all existing subscribers will transition to extranet connectivity shortly, however, because of the economies available through this method. When all existing FIX circuits have been terminated, Nasdaq will file a follow-up amendment to remove all references to FIX in Rule 7010(f) other than the FIX port charge.

Currently, several non-member service bureaus provide their subscribers with connectivity to Nasdaq through FIX, but all of them connect to Nasdaq through extranets. Since the extranet charges the service bureau for required connectivity and the Nasdaq FIX port charge is assessed to the member firm receiving the service, there is no Nasdaq charge to the service bureau. Connectivity through extranets will continue to be available to all service bureaus that decide to offer FIX connectivity.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,<sup>6</sup> in general, and with section 15A(b)(5) of the Act,<sup>7</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. Under the modified fee schedule, firms with existing FIX circuits may continue to use them at current prices, but Nasdaq believes that they are likely to switch to more economical extranet connectivity. All firms using extranet

connectivity pay Nasdaq the same fee of \$300 per FIX port.

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

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Nasdaq neither solicited nor received written comments on this proposal.

## 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. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-NASD-2003-196. 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, comments should be sent in hard copy or by e-mail, but not by both methods. 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 Nasdaq. All submissions should refer to File No. SR-NASD-2003-196 and should be submitted by February 13, 2004.

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

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 04-1457 Filed 1-22-04; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49092; File No. SR-NASD-2003-195]

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

January 16, 2004.

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 December 29, 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 the Nasdaq has prepared. 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 Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the rule effective upon Commission receipt of this 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 Substance of the Proposed Rule Change**

Nasdaq is filing this proposed rule change to modify fees for NASD members using the Financial Information Exchange ("FIX") protocol

<sup>8</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> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>5</sup> See note 3, *supra*.

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

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

to connect to Nasdaq.<sup>5</sup> Nasdaq will implement the change on January 1, 2004.

The text of the proposed rule change is below. Proposed new language is in *italics*.

\* \* \* \* \*

**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 subscriber using CTCI and/or FIX:

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

*FIX connectivity through Options 1, 2, or 3 or the Disaster Recovery Option will not be available to new subscribers that are NASD members after January 1, 2004.*

(g)–(u) 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**

Earlier this year, Nasdaq expanded the connectivity options available to subscribers by introducing the FIX protocol as a means of accessing SuperMontage.<sup>6</sup> 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.

Under the pricing schedule for FIX that has been in effect since August 2003, firms had several options for establishing FIX connectivity, including the ability to use new or existing CTCI circuits for FIX messaging, to establish FIX-only circuits, or to connect to Nasdaq indirectly through third-party private networks (often referred to as "extranets") or service bureaus that provide the option of FIX connectivity to their subscribers. Although Nasdaq's introduction of FIX has been quite successful, the preferred method of establishing connectivity has been through extranets. Nasdaq believes that extranet connectivity has proven popular because it is generally more economical to a firm than the other options.

Under this method, a firm establishes a connection with any of the private network providers that offer their subscribers connectivity to Nasdaq. Nasdaq likewise establishes a connection to the extranet, and both Nasdaq and firms accessing Nasdaq through the extranet pay the extranet the charges that it assesses for

connectivity. Thus, the extranet becomes a connectivity service provider both to Nasdaq and FIX users, and is paid by each accordingly. In addition, Nasdaq assesses the end user a port charge of \$300 per month for each port (*i.e.*, each connection to a server) that uses FIX. Each firm determines the number of ports that it requires, based on its message traffic needs.

Because FIX connectivity through extranets has proven to be the preferred method, Nasdaq has decided to phase out the other options that currently exist. Accordingly, after January 1, 2004, Nasdaq will no longer offer new subscribers that are NASD members the option of using FIX through CTCI or FIX-only circuits. A comparable rule change for non-members will take effect upon approval by the Commission.<sup>7</sup> Existing subscribers will be permitted to continue to use their circuits at current prices. Nasdaq expects that all existing subscribers will transition to extranet connectivity shortly, however, because of the economies available through this method. When all existing FIX circuits have been terminated, Nasdaq will file a follow-up amendment to remove all references to FIX in Rule 7010(f) other than the FIX port charge.

**2. Statutory Basis**

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,<sup>8</sup> in

<sup>5</sup> Nasdaq is also submitting a comparable rule change for non-members. See SR-NASD-2003-196.

<sup>6</sup> Securities Exchange Act Release Nos. 48387 (August 21, 2003), 68 FR 51619 (August 27, 2003)

(SR-NASD-2003-117); 48637 (October 15, 2003), 68 FR 60430 (October 22, 2003) (SR-NASD-2003-118).

<sup>7</sup> See note 5, *supra*.

<sup>8</sup> 15 U.S.C. 78o-3.

general, and with section 15A(b)(5) of the Act,<sup>9</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. Under the modified fee schedule, firms with existing FIX circuits may continue to use them at current prices, but Nasdaq believes that they are likely to switch to more economical extranet connectivity. All firms using extranet connectivity pay Nasdaq the same fee of \$300 per FIX port.

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

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Nasdaq neither solicited nor received written comments on this proposal.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and Rule 19b-4(f)(2)<sup>11</sup> thereunder. Accordingly, the proposal has taken effect upon filing with the Commission. At any time within 60 days after the filing of the 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. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-NASD-2003-195. 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, comments should be sent in hard copy or by e-mail, but not by both methods. 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 Nasdaq. All submissions should refer to File No. SR-NASD-2003-195 and should be submitted by February 13, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-1458 Filed 1-22-04; 8:45 am]

BILLING CODE 8010-01-P

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-49081; File No. SR-NASD-2004-05]

#### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend NASD Rule 2370 Relating to Certain Lending Arrangements Between Registered Persons and Customers**

January 14, 2004.

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 January 9, 2004, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), 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 NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.<sup>3</sup>

<sup>12</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> NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act to approve the proposed rule change prior to the

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

NASD proposes to amend NASD Rule 2370 to exempt certain types of permissible lending arrangements from the rule's notice and approval requirements and also to indicate that the scope of the rule is limited to lending arrangements between registered persons and their customers, rather than any customer of the firm. The text of the proposed rule change appears below. New text is in italics. Deleted text is in brackets.

\* \* \* \* \*

#### **2370. Borrowing From or Lending to Customers**

(a) No person associated with a member in any registered capacity may borrow money from or lend money to any customer of [the member] *such person* unless: (1) The member has written procedures allowing the borrowing and lending of money between such registered persons and customers of the member; *and* (2) the lending or borrowing arrangement meets one of the following conditions: (A) The customer is a member of such person's immediate family; (B) the customer is a financial institution regularly engaged in the business of providing credit, financing, or loans, or other entity or person that regularly arranges or extends credit in the ordinary course of business; (C) the customer and the registered person are both registered persons of the same member firm; (D) the lending arrangement is based on a personal relationship with the customer, such that the loan would not have been solicited, offered, or given had the customer and the associated person not maintained a relationship outside of the broker/customer relationship; or (E) the lending arrangement is based on a business relationship outside of the broker-customer relationship; and (3) the m].

#### *(b) Procedures*

(1) Members [has] *must* pre-approve[d] in writing the lending or borrowing arrangements *described in subparagraphs (a)(2)(C), (D), and (E) above.*

(2) *With respect to the lending or borrowing arrangements described in subparagraph (a)(2)(A) above, a member's written procedures may indicate that registered persons are not required to notify the member or receive member approval either prior to or subsequent to entering into such lending or borrowing arrangements.*

30th day after its publication in the **Federal Register**. 15 U.S.C. 78s(b)(2).

<sup>9</sup> 15 U.S.C. 78o-3(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).