

and providing a dedicated circuit or circuits for testing of subscriber communications interfaces with Nasdaq's central processing facilities. Such costs include an installation cost and a monthly infrastructure cost that Nasdaq incurs through its network service provider, in addition to costs for hardware, licensing and labor required to maintain the test network. New subscribers, described in the proposed rule as "New NTF Subscribers," will receive 90 calendar-days free service if they choose to sign a one-year agreement for service. New NTF Subscribers are subscribers who have never purchased dedicated test circuits or who have not had dedicated test service in over six months. Subscribers that do not wish to sign a one-year agreement may purchase services on a month-to-month basis. As has always been the case, no testing fee would be assessed in circumstances where major systems/software changes instituted by Nasdaq have prompted the subscriber's test. In addition, Nasdaq will not charge subscribers hourly fees for market data vendor feed testing.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>4</sup> in general, and with Section 15A(b)(5) of the Act,<sup>5</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among member and non-member subscribers using the NTF. The fees will be charged to member and non-member subscribers that choose to test their communication systems interfaces with Nasdaq's central processing facilities over a dedicated circuit or circuits. Member and non-member subscribers will be charged the same fees for the same service. Nasdaq believes the fees are reasonable in that they have been calculated to recover Nasdaq's actual costs of installation and maintenance of the dedicated circuit(s).

### *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**

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 NASD 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.

The Commission is considering granting accelerated approval of this proposed rule change after the expiration of a 15-day comment period.

### **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 number SR-NASD-2002-73 and should be submitted by July 3, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

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

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-46065; File No. SR-NASD-2002-72]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Nasdaq Testing Facility Fees, and to Add the Ability to Test Computer-to-Computer Interface, Application Programming Interface, and Market Data Vendor Feeds Over Dedicated Circuits**

June 12, 2002.

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 June 4, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), 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 filed the proposal pursuant to section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> 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 proposes to amend NASD Rule 7050(d) to add a schedule of monthly fees and a one-time installation fee to be charged to subscribers that use a dedicated circuit or circuits to test their communications interfaces and/or market data vendor feeds with Nasdaq's central data processing facilities.<sup>6</sup> The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

7050. Other Services  
(a) No change.  
(b) No change.

<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).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> Nasdaq provided the Commission with written notice of its intention to file the proposed rule change on May 17, 2002. Nasdaq has asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

<sup>6</sup> Nasdaq has filed a similar proposal to extend the same fees and abilities to non-members. See Securities Exchange Act Release No. 46066 (June 12, 2002) (SR-NASD-2002-73).

<sup>4</sup> 15 U.S.C. 78o-3.

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

<sup>6</sup> 17 CFR 200.30-3(a)(12).

(c) No change.  
(d) [Testing Services] *Nasdaq Testing Facility (NTF)*

(1) Subscribers that conduct tests of their computer-to-computer *interface* (CTCI)<sub>2</sub> [or digital interface (DIS/CHPS)] *NWII application programming interface (API), or market data vendor feeds* [with the central processing facilities] *through the Nasdaq Testing Facility (NTF)* of The Nasdaq Stock

Market, Inc. (N[SMI]*asdaq*) shall pay the following charges:

\$250/hour—For CTCI/[DIS/CHPS]*NWII API* testing between 9 a.m. and 5 p.m. E.T. on business days;

\$333/hour—For *CTCI/NWII API* testing at all other times on business days, or on weekends and holidays.

(2) 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 N[SMI]*asdaq* or

(B) modifications to software and/or services initiated by N[SMI]*asdaq* in response to a contingency.

(3) *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 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 .....	Installation of any service option including SDP configuration .....	\$700/circuit/installation.

(4) *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) “*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 its proposal and discussed any comments it received regarding the proposal. 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 proposes to establish a new category of monthly fees and one-time installation fees applicable to member subscribers that choose to test their communication interfaces with Nasdaq systems over a dedicated circuit or circuits, as opposed to a dial-up connection. These fees would be charged in addition to the hourly fees currently charged. Many subscribers have requested that Nasdaq expand its Nasdaq Testing Facility (NTF) services

to include dedicated lines and the ability to test market data vendor feeds in addition to computer-to-computer interface (CTCI) and application programming interface (API). Nasdaq filed this proposal in response to those requests.

Members and nonmember subscribers currently access the NTF over a dial-up connection to test CTCI and API with their systems. Subscribers are currently unable to test market data vendor feeds through the NTF. Nasdaq is proposing to provide new services for the NTF that will allow subscribers to test CTCI and API as well as market data vendor feeds over a dedicated circuit or circuits. These new services will allow firms that have trading environments integrating CTCI, API and Nasdaq vendor data to test their systems more completely. Member firms typically perform application testing to ensure that the software the firm has developed to interface with Nasdaq systems works properly. Software may be developed to take advantage of a Nasdaq market enhancement or to enhance a firm's internal systems or software applications. The subscriber determines the scope, purpose, and longevity of the test. Nasdaq participates in the testing process by providing a test environment that closely approximates the production environment for the systems the subscriber wishes to test as well as test scripts used for testing relevant functionality. The proposed schedule of monthly and installation fees has been calculated to cover the actual costs of installing and providing a dedicated circuit or circuits for testing of subscriber communications interfaces with Nasdaq's central processing

facilities.<sup>7</sup> Such costs include an installation cost and monthly infrastructure cost that Nasdaq incurs through its network service provider, in addition to costs for hardware, licensing and labor required to maintain the test network. New subscribers, described in the proposed rule as “New NTF Subscribers,” will receive 90 calendar-days free service if they choose to sign a one-year agreement for service. New NTF Subscribers are subscribers who have never purchased dedicated test circuits or who have not had dedicated test service in over six months. Subscribers that do not wish to sign a one-year agreement may purchase services on a month-to-month basis. As has always been the case, no hourly testing fee would be assessed in circumstances where major systems/software changes instituted by Nasdaq have prompted the subscriber's test. In addition, Nasdaq will not charge subscribers hourly fees for market data vendor feed testing.

#### 2. Statutory Basis

Nasdaq believes that the proposal is consistent with the provisions of Section 15A of the Act,<sup>8</sup> in general, and with Section 15A(b)(5) of the Act,<sup>9</sup> in particular, in that the fees will be charged to member subscribers that

<sup>7</sup> The fees are not designed to generate revenue. Telephone conversation between Teri Nelson Jacoby, Assistant General Counsel, Nasdaq, and Joseph Morra, Special Counsel, Division of Market Regulation, Commission, June 3, 2002. The Commission expects that Nasdaq will monitor the fees carefully, and should Nasdaq collect more than is necessary to cover the actual costs of installing and providing a dedicated circuit or circuits for testing of subscriber communications interfaces with Nasdaq's central processing facilities, the Commission expects Nasdaq to adjust the fees.

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

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

choose to test their communication systems interfaces with Nasdaq's central processing facilities over a dedicated circuit or circuits. Nasdaq believes the fees are reasonable in that they have been calculated to recover Nasdaq's actual costs of installation and maintenance of the dedicated circuit(s).

#### *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**

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 Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup> 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 requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow subscribers to test CTCI and API as well as market data vendor feeds over a dedicated circuit or circuits immediately, thereby allowing firms that have trading environments integrating CTCI, API and Nasdaq vendor data to test their systems more completely. For these reasons, the Commission designates the proposal to

be effective and operative upon filing with the Commission.<sup>12</sup>

### **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 Association. All submissions should refer to file number SR-NASD-2002-72 and should be submitted by July 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-46060; File No. SR-NASD-2002-64]**

#### **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. Amending the Restated Certificate of Incorporation of the Nasdaq Stock Market, Inc.**

June 11, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on May 16, 2002, the National Association of

<sup>12</sup> 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).

<sup>13</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.

Securities Dealers, Inc. ("NASD" or "Association") through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to 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 the NASD. Nasdaq filed Amendment No. 1 to the proposed rule change on June 3, 2002.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

On December 5, 2002, the Commission approved SR-NASD-2001-34,<sup>4</sup> a proposed rule change to amend the Certificate, but the amendment reflected in SR-NASD-2001-34 was not implemented at that time<sup>5</sup> because under the General Corporation Law of the State of Delaware ("Delaware Law"), the amendment must be approved by Nasdaq's stockholders.<sup>6</sup> The proposed rule change contained in this filing—SR-NASD-2002-64—amends the language approved by the Commission in SR-NASD-2001-34. Nasdaq submitted the text approved in SR-NASD-2001-34, as amended by SR-NASD-2002-64, to its stockholders for approval at the 2002 annual meeting of stockholders (the "Annual Meeting"), which was held on May 22, 2002, and the stockholders voted to approve the changes.<sup>7</sup>

The text of the proposed rule change is set forth below, which includes the amendments approved by the Commission under SR-NASD-2001-34. New text is italicized; deleted text is bracketed.

<sup>3</sup> See letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated May 31, 2002 ("Amendment No. 1"). In Amendment No. 1, Nasdaq clarified the proposal to reflect that the proposed amendments to the Nasdaq Restated Certificate of Incorporation (the "Certificate") were approved by its shareholders at the May 22, 2002 annual meeting. Because the Form 19b-4 submitted on May 16, 2002 was not complete, the proposed rule change was not considered filed. The proposed rule change became effective on June 3, 2002, the date on which Amendment No. 1 was filed with the Commission.

<sup>4</sup> See Securities Exchange Act Release No. 45135 (December 5, 2001), 66 FR 64327 (December 12, 2001).

<sup>5</sup> See Amendment No. 1, *supra* note 3.

<sup>6</sup> Del. Code Ann. Tit. 8, § 242(b)(2001).

<sup>7</sup> See Amendment No. 1, *supra* note 3.

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

<sup>11</sup> 17 CFR 240.19b-4(f)(6).