

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47607; File No. SR-NASD-2003-46]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. to Modify Computer-to-Computer Interface Fees for Non-NASD Members

April 1, 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 March 20, 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 and II below, which Items have been prepared by Nasdaq. Amendment No. 1 was filed on March 31, 2003.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, 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 amend NASD Rule 7010 to modify the fees paid by

persons that are not NASD members for bandwidth enhancements of Computer-to-Computer Interface ("CTCI") lines.⁴ Nasdaq proposes to implement the rule change on April 1, 2003.⁵

The text of the proposed rule change, as amended, is below. New text is in *italics*. Deleted text is in [brackets].

* * * * *

7000. Charges for Services and Equipment

A. Rule 7010. System Services

(a)-(e) No change.

(f) Nasdaq Workstation™ Service

(1) No change.

[(3)] (2) The following charges shall apply for each CTCI subscriber[*]:

Options	Price
Option 1: Dual 56kb lines (one for redundancy) and single hub and router	\$1275/month.
Option 2: Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy).	\$1600/month.
Option 3: Dual T1 lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy). Includes base bandwidth of 128kb.	\$8000/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. (For remote disaster recovery sites only.)	\$975/month.
Bandwidth Enhancement Fee (for T1 subscribers only)	[\$4000] 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.
Relocation Fee (for the movement of TCP/IP-capable lines within a single location)	\$1700 per relocation.

[*As reflected in SR-NASD-00-80 and SR-NASD-00-81, Nasdaq began replacing x.25 CTCI circuits with TCP/IP CTCI circuits in January 2001. Pursuant to SR-NASD-2001-87 and SR-NASD-2001-88, the fee for x.25 CTCI circuits " which had remained \$200 per month per circuit " was increased to \$1,275 per month per circuit from February 1, 2002 until the date of the termination of such circuits. Pursuant to SR-NASD-2002-96, users of x.25 CTCI circuits will receive a credit of \$625 per month per circuit from February 1, 2002 until the date of circuit termination.]

(g)-(s) 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, Nasdaq included statements concerning the purpose of and basis for the

proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item III 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's CTCI network is a point-to-point dedicated circuit connection from the premises of brokerages and service providers to Nasdaq's Trumbull, Connecticut processing facilities. Through CTCI, firms are able to enter trade reports into Nasdaq's Automated

Confirmation Transaction Service ("ACT"), orders into Nasdaq's transaction execution systems, and mutual fund pricing data into Nasdaq's Mutual Fund Quotation Service. The CTCI network operates over the Enterprise Wide Network II ("EWN II") and provides connectivity over powerful 56kb and T1 data lines. In addition, the CTCI network uses the industry-standard Transmission Control Protocol/Internet Protocol ("TCP/IP"), a transmission protocol that is robust, efficient, and well known among the technical community.

As part of an ongoing effort to reduce costs incurred to use its systems and services, Nasdaq proposes to reduce the fee for CTCI bandwidth enhancements⁶ from \$4,000 to \$600 per month for each 64 kilobit ("kb") increment of additional bandwidth provided over a T1 CTCI line (above the base level of 128 kb). Nasdaq has also proposed an identical pricing

¹ 5 U.S.C. 778s(b)(1).

² 17 CFR 240.19b-4

³ See letter from John M. Yetter, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division") Commission, dated March 28, 2003 ("Amendment No. 1"). In Amendment No. 1, Nasdaq proposed to implement the proposed rule change on April 1,

2003 and requested accelerated approval of the proposal.

⁴ Nasdaq also submitted a proposed rule change to make an identical modification to the bandwidth enhancement fee paid by NASD members. See Securities Exchange Act Release No. 47608 (April 1, 2003) (Notice of Filing and Immediate Effectiveness of SR-NASD-2003-43).

⁵ See Amendment No. 1, *supra* note 3.

⁶ The term "bandwidth" refers to the amount of data that can be transmitted over a CTCI line in one second. Accordingly, bandwidth enhancements allow a CTCI subscriber to send and receive a greater volume of data over a line.

decrease for NASD member firms⁷ and now proposes to offer this fee reduction to non-NASD members that use CTCI.⁸

2. Statutory Basis

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

⁷ See *supra* note 4.

⁸ 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.

⁹ 15 U.S.C. 78o-3.

¹⁰ 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 Act¹¹ 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.¹² 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.¹³ 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)¹⁴ and Section 19(b)(2) of the Act¹⁵ 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,¹⁶ that the proposed rule change (SR-NASD-2003-46) and Amendment No. 1 thereto are

¹¹ 15 U.S.C. 78o-3(b)(5).

¹² 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).

¹³ See *supra* note 4.

¹⁴ 15 U.S.C. 78o-3(b).

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ *Id.*

hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,

Deputy Secretary.

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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"),¹ and Rule 19b-4 thereunder,² 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.³ 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.⁴ Nasdaq proposes to implement the proposed rule change on April 1, 2003. The text of the proposed rule change is below. Proposed new

¹⁷ 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 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.

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