

available to all Post Data users, whether the users are Nasdaq customers or customers of a participating market data vendor. If Nasdaq offers a free product enhancement during the pilot program, Nasdaq will make the enhancement available to all direct and indirect users at no cost, and provide notice to vendors to allow vendors an opportunity to implement programming changes if necessary.<sup>27</sup>

**Retail Customers.** Nasdaq states unequivocally that it will not limit the ability of private data vendors to redistribute the product to their respective customers. To that end, Nasdaq clarifies that it defines a "retail" user as a direct or indirect user—in other words, any user who receives the data, be it from a market data vendor or from Nasdaq.<sup>28</sup>

### III. Discussion

After careful review, the Commission finds the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.<sup>29</sup> In particular, the Commission finds that the proposed rule change is consistent with Sections 15A(b)(5) and (6) of the Act.<sup>30</sup>

Section 15A(b)(5)<sup>31</sup> requires the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that a national securities association operates or controls. Section 15A(b)(6)<sup>32</sup> requires that the rules of a national securities association be designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Commission finds that the proposal is consistent with both of these Sections of the Act. Specifically, the Commission has reviewed the comment letters and Nasdaq's response to the comment letters. Nasdaq has stated it will make the Post Data product available to retail subscribers for \$70 per month, and to market data vendors for \$35 per month for each end user receiving the information through the data vendor. The Commission finds that the fees that Nasdaq proposes to charge for both the

retail and the wholesale distribution of Post Data are equitably allocated among members and nonmembers. The differential between the retail and wholesale fees potentially will allow market data vendors the opportunity to sell the data on a retail basis at prices higher than \$35 but lower than \$70, and remain competitive with Nasdaq's retail price of \$70. In addition, Nasdaq has clarified that the wholesale fee does not include the costs associated with the maintenance and security of the retail web-based product.

Furthermore, the Commission believes the information contained in Post Data may help to foster cooperation and coordination with persons engaged in facilitating transactions in securities, by providing consistent, reliable, and verified market data to market participants who choose to subscribe to the service or purchase the information from market data vendors. The Commission believes that investors will benefit by the timely dissemination of this reliable market data.<sup>33</sup> The Commission further finds that the proposal places no undue burden on competition, and in fact, may foster competition, as market data vendors obtain verified data from Post Data, provide enhancements to the data, and in turn, sell the enhanced data to retail customers.<sup>34</sup> Finally, the Commission is satisfied that Nasdaq has fully and properly addressed the questions raised by the commenter regarding product enhancements and the ability of vendors to redistribute the data to their respective customers.

The Commission notes that Post Data will be provided on a one-year pilot basis. The Commission expects that Nasdaq will evaluate the fees it has established for Post Data, and provide the Commission with a report of its findings before the expiration of, or extension of, the one-year pilot program.

While minor modifications to Post Data are anticipated, should Nasdaq wish to modify the contents of Post Data in any substantive way, Nasdaq must do so pursuant to Section 19(b)<sup>35</sup> and Rule 19b-4<sup>36</sup> thereunder.

<sup>33</sup> In this regard, the Commission notes Nasdaq's representation that Nasdaq generally will provide the Post Data information to vendors approximately five minutes before it posts the information on the Web site for direct end-users. This time differential enables the vendor to capture and post the data on its own terminals before Nasdaq's release time.

<sup>34</sup> The Commission notes that this proposal relates to enhanced data that is not integral to the ability of a broker-dealer or customer to trade. *Cf. NASD v. SEC*, footnote 17, *supra*.

<sup>35</sup> 15 U.S.C. 78s.

<sup>36</sup> 17 CFR 240.19b-4.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>37</sup> that the proposed rule change (SR-NASD-99-12), as amended, be and hereby is approved on a pilot basis through January 10, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>38</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45266; File No. SR-NASD-2001-88]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Relating to Computer to Computer Interface Fees

January 10, 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 December 7, 2001, 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. On January 10, 2001, 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, as amended, from interested persons.

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

The proposed rule change increase the fee assessed on NASD non-members that continue to use the x.25 Computer-

<sup>37</sup> 15 U.S.C. 78s(b)(2).

<sup>38</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> Amendment No. 1 contains the rule text of the proposed rule filing, as well as represented that all non-members affected by the proposed rule change had been alerted about the filing and that no unlisted trading privilege exchange would be affected by the filing. See letter from John Yetter, Assistant General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 8, 2002 ("Amendment No. 1").

<sup>27</sup> Nasdaq Response letter at 4.

<sup>28</sup> *Id.*

<sup>29</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>30</sup> 15 U.S.C. 78o-3(b)(5) and (6).

<sup>31</sup> 15 U.S.C. 78o-3(b)(5).

<sup>32</sup> 15 U.S.C. 78o-3(b)(6).

to-Computer Interface ("CTCI") to access Nasdaq services rather than transitioning to the Transmission Control Protocol/Internet Protocol ("TCP/IP") CTCI.

The text of the proposed rule change is set forth below. New text is italicized. Deleted text is bracketed.

\* \* \* \* \*

Rule 7010. System Services

(a)–(e) No change.

(f)(1)–(2) No change.

(3) 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), and dual routers (one for redundancy). Includes base bandwidth of 128kb.	\$8000/month.
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/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—Lines within a single location.	\$1700 per relocation.

(g)–(q) No change.

\* \* \* \* \*

In prior rule filings, Nasdaq established the fees to be charged for TCP/IP CTCI linkages, which are now reflected in NASD Rule 7010(f)(3).<sup>4</sup> In those filings, Nasdaq indicated that it would impose TCP/IP fees on a rolling basis on NASD non-members as they converted to TCP/IP CTCI linkages. Accordingly, Nasdaq has continued to charge the previous CTCI fee of \$200 per month per CTCI circuit to NASD members that have continued to use x.25 CTCI circuits. In this filing, Nasdaq is increasing the monthly charge to \$1,275 per circuit.<sup>5</sup> Nasdaq plans to assess the new fee during the months of February and March 2002 and to terminate remaining x.25 CTCI circuits at the end of March, although both the date for implementing the new fee and the date for terminating x.25 CTCI circuits are subject to adjustment.<sup>6</sup> Nasdaq has provided and will continue to provide notice to market participants of these dates through NasdaqTrader.com alerts, direct mail, and telephone calls to NASD members that have not yet converted to TCP/IP CTCI linkages, and will notify the Commission via letter if there is an change in these dates.<sup>7</sup>

\* As reflected in SR–NASD–00–80 and SR–NASD–00–81, x.25 CTCI circuits are being replaced with TCP/IP CTCI circuits. Pursuant to SR–NASD–2001–87 and SR–NASD–2001–88, the fee for x.25 CTCI circuits, which has remained \$200 per month per circuit—is increased to \$1,275 per month per circuit until the date of the termination of such circuits.

<sup>4</sup> See Securities Exchange Act Release No. 43821 (Jan. 8, 2001), 66 FR 3627 (Jan. 16, 2001); Securities Exchange Act Release No. 43815 (Jan. 8, 2001), 66 FR 3625 (Jan. 16, 2001); and Securities Exchange Act Release No. 44144 (Apr. 2, 2001), 66 FR 18332 (Apr. 6, 2001).

## 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 comments it received on the proposed rule change. The text of these statements may be examined in the places specified in Item IV below. Nasdaq has prepared summaries, set forth below in Sections A, B, and C, 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 of Nasdaq's Trumbull Connection processing facilities. Through CTCI, firms are able to enter trade reports to Nasdaq's Automated Confirmation Transaction Service ("ACT") and orders to Nasdaq's Small Order Execution ("SOES") and SuperSOES systems. CTCI also

<sup>5</sup> The increase will not be imposed, however, on members that use x.25 CTCI circuits solely for the purpose of accessing the Fixed Income Pricing System, which is scheduled to be replaced by a new corporate bond trade reporting and transaction dissemination facility known as TRACE in 2002. See Securities Exchange Act Release No. 43873 (Jan. 23, 2001), 66 FR 8131 (Jan. 29, 2001).

<sup>6</sup> Nasdaq has indicated that those members utilizing the remaining x.25 CTCI circuits will be unable to link to the CTCI system at the end of March. Nasdaq does not foresee any circumstances that would cause it to adjust the date of termination of the x.25 CTCI circuits at this time. January 3,

processes SelectNet transaction confirmation reports.

In response to numerous requests from market participants that Nasdaq upgrade the speed and reliability of its CTCI data transmission environment, Nasdaq began the process last year of "sunsetting" its CTCI x.25/bisynch network in favor of a new network that provides greater capacity and a more efficient transmission protocol. The CTCI x.25/bisynch network can only transmit data up to 19.2 kilobits per second ("kb"). The new CTCI network operates over the Enterprise Wide Network II ("EWN II") and provides connectivity over more powerful 56kb and T1 data lines. In addition, the new CTCI network uses the industry-standard TCP/IP transmission protocol, a protocol that is robust, efficient, and well known among the technical community. In order to take advantage of the new CTCI network, users are required to upgrade their current x.25/19.2kb lines to either 56kb or T1 lines.

Although the conversion process has been underway since January of this year, as of late November, 295 x.25CTCI circuits held by 60 firms remained active. Nasdaq is urging non-members that still rely upon these outmoded connections to complete their

2002 telephone conversation between John Yetter, Assistant General Counsel, Nasdaq, and John Riedel, Staff Attorney, Division, Commission.

<sup>7</sup> On December 12, 2001, Nasdaq issued a Head Trader alert that provided notice of the fee increase and posted the alert on the NasdaqTrader.com website. At that time, Nasdaq also began making direct contacts with customers that continue to use x.25 CTCI circuits to alert them of the change, and had contacted all non-members that might be affected by SR–NASD–2001–88 within several days. See Amendment No. 1, *supra* note 3.

conversions as soon as possible. Nasdaq believes that charging a higher price to non-members that have failed to convert will provide them with a financial incentive to complete their conversions in a timely fashion and thereby assist Nasdaq in achieving its goal of terminating this almost obsolete network. Moreover, as more and more users convert to TCP/IP, Nasdaq's per circuit cost of continuing to offer the x.25 CTCL connections increases. Since the x.25 CTCL network is provisioned to support over 600 circuits, Nasdaq believes that it is appropriate to pass through the expense of that network to those firms that have failed to transition. The fee increase, together with continued transition support from Nasdaq staff, will allow Nasdaq to "sunset" the x.25 CTCL network on March 31, 2002 (or sooner, if all x.25 CTCL subscribers have transitioned prior to that date).

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act,<sup>8</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.

### *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*

Nasdaq has either solicited nor received written comments on the proposed rule change.

## 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, 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 will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to file number SR-NASD 2001-88 and should be submitted by February 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45273; File No. SR-NASD-2001-92]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend the Expiration Date of Nasdaq's Transaction Credit Pilot Program**

January 14, 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 December 17, 2001, 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" or "SEC") 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)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 7010, System Services, to extend Nasdaq's transaction credit pilot program ("Program") for an additional six months, through June 28, 2002, for Tape A and B reports. No other substantive changes are proposed to the Program at this time. The text of the proposed rule change is available at the Association and at the Commission.

### **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 proposes to extend the Program<sup>5</sup> for an additional six months, through June 28, 2002, to provide a transaction credit to NASD members that exceed certain levels of trading activity in exchange-listed securities. Nasdaq's InterMarket is a quotation, communication, and execution system that allows NASD members to trade stocks listed on the New York Stock

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

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

<sup>5</sup> The transaction credit can be applied to any and all charges imposed by NASD or its non-self-regulatory organization affiliates. Any remaining balance may be paid directly to the member.

<sup>8</sup> 15 U.S.C. 78o-3(b)(5).

<sup>9</sup> 17 CFR 200.30-(a)(12).

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

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