

contracts for which the trading crowd can compete.¹⁶ The Amex facilitation program guarantees an allocation of no more than 40% of an order to a member firm seeking to facilitate an order. Moreover, the Amex rule includes a provision that limits the number of contracts to be allocated to the facilitating firm and the specialist in the aggregate to no more than 40% of the order. The rule for which the Amex seeks permanent approval is consistent with the Commission's position with respect to participation guarantees.

The language that the Amex proposes to add to the rule would clarify that, if the facilitating firm has participated in the 20% of the contracts to which it is entitled when the order is traded at the best bid or offer provided by the trading crowd in response to the floor broker's initial request for a market, the specialist would be allocated either the greater of 20% of the executed contracts or a share of the executed contracts that have been divided equally among the specialist and other participants in the trade. This provision is consistent with the Commission's position regarding participation guarantees and comports with the Commission's understanding of how the Amex rule was to be applied when the Commission approved the rule on a pilot basis.

As noted above, the Exchange has requested that the Commission grant accelerated approval to the proposed rule change. The Exchange states that the pilot program has been in effect for almost three years without incident and that substantially similar rules are in place at the Chicago Board Options Exchange, the Pacific Exchange, and the International Securities Exchange.¹⁷ The Exchange adds that accelerated approval would obviate the need to extend the pilot program beyond its current expiration date of April 7, 2003.

The Commission finds good cause, consistent with Sections 6(b) and 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The proposal raises no new regulatory issue and will make permanent a pilot program that comports with the facilitation cross rules of other exchanges.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-Amex-2000-49), as amended, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47648; File No. SR-NASD-2003-53]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify Nasdaq Test Facility Pricing Under Rule 7050 for NASD Members

April 8, 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. 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 Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change 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 modify Nasdaq Test Facility pricing under Rule 7050 for NASD members.⁵ Nasdaq will implement the proposed rule change on April 1, 2003. The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ Nasdaq is also submitting a proposed rule change to establish an identical fee for non-members. See SR-NASD-2003-54.

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) new or enhanced services and/or software provided by Nasdaq[.] or

¹⁶ See, e.g., Securities Exchange Act Release No. 43100 (July 31, 2000), 65 FR 48778 (August 9, 2000).

¹⁷ See Amendment No. 5.