

(B) modifications to software and/or services initiated by Nasdaq in response to a contingency[.]; or

(C) testing by a subscriber of a Nasdaq service that the subscriber has not used previously, except if more than 30 days

have elapsed since the subscriber commenced the testing of such Nasdaq service.

[[3]4] 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 Feeds 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]5] 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]6] "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.

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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 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

The proposed rule change seeks to make certain modifications to the pricing of testing services provided through the Nasdaq Test Facility ("NTF"). The objectives of the pricing changes are to reduce barriers to entry for new Nasdaq subscribers and to address feedback from subscribers regarding current test fees. In some instances, the current charges are not cost efficient for subscribers, and as a consequence, firms may choose not to test through NTF or elect not to connect to Nasdaq's systems at all. The proposed rule change seeks to encourage

subscribers to make greater use of Nasdaq services.

The proposed rule distinguishes between active and idle connections to the NTF. An active connection is in effect while transactions are actually being transmitted and for a brief period of inactivity thereafter. The existing hourly rate (\$285 per hour) remains unchanged with respect to the times when the connection is active during the NTF's normal operating hours. However, if no transactions are being transmitted over an open connection, then, after a certain period of inactivity, that connection would be deemed idle and a newly established lower rate (\$75 per hour) will apply. Initially, the period during which a connection needs to remain inactive before it will be deemed idle will be 10 minutes. However, Nasdaq reserves the right to adjust this time within a range of 5 to 10 minutes by giving notice of the change to NTF subscribers. The idle connection rate will not apply outside of NTF's normal operating hours, when the existing rate (\$333 per hour) remains unchanged for both active and idle connections.

The proposed rule also eliminates idle connection charges during the NTF's normal operating hours for NTF subscribers with dedicated circuit connections and waives hourly charges during the times over an initial 30-day period when a subscriber is using NTF to test a Nasdaq service that the subscriber has not used previously.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,⁶ including section 15A(b)(5) of the Act,⁷ 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. By adopting a pricing structure that is responsive to subscriber needs and market demands, the proposed rule supports efficient use of existing systems and ensures that the charges associated with such use are allocated equitably.

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.

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

The proposed rule change has become immediately effective pursuant to section 19(b)(3)(A)(ii) of the Act,⁸ and subparagraph (f)(2) of Rule 19b-4 thereunder,⁹ in that it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of such 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,

⁶ 15 U.S.C. 78o-3.

⁷ 15 U.S.C. 78o-3(b)(5).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).