

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 has delayed until January 1, 2003, the implementation of certain fee changes for the Nasdaq Testing Facility ("NTF") established by SR-NASD-2002-72⁵ and SR-NASD-2002-73.⁶ There is no proposed rule language.

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

The purpose of the proposed rule change is to notify the Commission and other interested parties of the delay until January 1, 2003, of the implementation of certain fee changes for the NTF. The fee changes were established by SR-NASD-2002-72 and SR-NASD-2002-73. In those filings, Nasdaq, among other things, amended rule 7050(d)(1) to apply the hourly testing fees for use of the NTF to testing of Nasdaq Workstation II ("NWII") application programming interface ("API") and market data vendor feeds. The hourly testing fees had formerly applied only to testing of computer-to-computer interfaces ("CTCI").⁷ Under the filings, the fee change was effective and to be implemented upon filing for members and upon Commission approval for non-members. However, Nasdaq delayed implementation of the testing fees for NWII API because of delays in the availability of a system that could accurately record the time

spent by a particular NTF user in testing NWII API. This delay has now been addressed, and Nasdaq implemented the fee for NWII API testing as of January 1, 2003. Prior to that time, Nasdaq has made the NTF available for testing of NWII API without charge, and Nasdaq has notified users of the NTF as to the implementation of the testing fees. All other aspects of SR-NASD-2002-72 and SR-NASD-2002-73 were implemented as of the effective dates of those filings.

Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,⁸ in general, and with section 15A(b)(5) of the Act,⁹ 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 of 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

The foregoing proposal has become effective pursuant to section 19(b)(3)(A)(i) of the Act,¹⁰ and rule 19b-4(f)(1)¹¹ thereunder, in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. 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.

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 NASD. All submissions should refer to file number SR-NASD-2003-06 and should be submitted by February 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47233; File No. SR-NASD-2002-127]

Self Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Amending Rule 11890 Concerning Clearly Erroneous Transactions

January 22, 2003.

I. Introduction

On September 24, 2002, the National Association of Securities Dealers, Inc., through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and rule 19b-4 thereunder,² a proposed rule change to amend NASD rule 11890, which provides Nasdaq with authority to nullify or modify transactions. On November 1, 2002, Nasdaq filed Amendment No. 1 that entirely replaced

⁵ Securities Exchange Act Release No. 46065 (June 12, 2002), 67 FR 41556 (June 18, 2002)(SR-NASD-2002-72)(immediately effective fees for members).

⁶ Securities Exchange Act Release No. 46234 (July 19, 2002), 67 FR 48693 (July 25, 2002)(SR-NASD-2002-73)(approval of fees for non-members).

⁷ Prior to the amendments, the rule had also made reference to testing of "digital interface (DIS/CHPS)," a technology that is not currently in use by Nasdaq. These references were deleted.

⁸ 15 U.S.C. 78o-3.

⁹ 15 U.S.C. 78o-3(b)(5).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(i).

¹¹ 17 CFR 240.19b-4(f)(1).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.