

(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.

(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.

(e) 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 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 currently offers market participants and other Nasdaq subscribers two messaging protocols for communicating with Nasdaq systems: computer-to-computer interface ("CTCI") and application programming interface ("API"). Effective August 25, 2003, Nasdaq will expand the connectivity options available to its subscribers by introducing the FIX protocol as a means of accessing SuperMontage. The FIX protocol was first developed in 1992, and since that time has become the dominant protocol for messaging among equity market participants. Nasdaq represents that FIX is now used by over 50% of all U.S. firms in the equity securities business, and its users include market makers and other broker-dealers, institutional investors, electronic communications networks ("ECNs"), and national securities exchanges.

Nasdaq proposes to amend Rule 7010(f) to reflect the various pricing options that Nasdaq proposes to make available to firms that connect through FIX. Firms that already have dedicated CTCI circuits would be able to use FIX over their existing circuits. Thus, these firms would be able to begin using FIX immediately, without having to incur

the costs or delays associated with installation of new circuits. Moreover, the charges for circuits used to support both FIX and CTCI would be the same as the current charges for CTCI-only circuits (although a firm that increases its bandwidth usage as a result of using FIX might have to install additional circuits or pay the existing bandwidth enhancement fee of \$600 per 64 kilobit per second increase if it exhausts its existing available bandwidth).⁶ However, Nasdaq would assess a "port charge" of \$300 per month for each port (i.e., a connection to a server that operates off of the circuit) that uses FIX, with the first port provided free of charge to firms with direct connections. Each customer would determine the number of ports that it requires, based on its message traffic needs.

A firm that does not currently have CTCI circuits would be able to obtain circuits to support both CTCI and FIX at the same prices that currently apply to CTCI circuits, or would be able to obtain dual 128 kb circuits to support FIX only at a reduced rate of \$4,000 per month (compared with the \$8,000 per month charge of 128 kb circuits that support CTCI and FIX). The lower fee reflects the lower costs to Nasdaq of supporting FIX (as compared with CTCI), as well as the more limited range of functionality that would be accessible to firms through FIX.⁷ Firms would also be able to connect to Nasdaq indirectly through service bureaus and third-party private networks that provide the option of FIX connectivity to their subscribers. In such cases, Nasdaq would charge for FIX or CTCI/FIX circuits if any must be supplied by Nasdaq to establish connectivity, and would also charge the end user a port charge of \$300 per month for each port that it requires, based on its message traffic needs.

Firms wishing to use FIX would be able to begin testing FIX connectivity during the month of August 2003. Accordingly, Nasdaq also proposes to amend Rule 7050(d), which lists the fees for the Nasdaq Testing Facility ("NTF"). The NTF would be available for testing FIX connectivity at the same rates that currently apply to CTCI/API testing. The fees for testing without a dedicated

testing circuit are: (i) \$285 per hour for an active connection during the normal operating hours of the NTF, (ii) \$75 per hour for an idle connection during normal operating hours; and (iii) \$333 per hour for an active or idle connection at times other than normal operating hours. In addition, firms have the option of obtaining dedicated 56kb testing circuits at a rate of \$1,100 for one CTCI/FIX circuit or \$1,800 for two circuits usable for API, CTCI, and FIX. Hourly fees also apply to testing through dedicated circuits, with the exception of the charge for idle connections during normal operating hours. Pursuant to Rule 7050(d)(3)(A), however, the hourly fees would not be applied to testing conducted prior to August 25, 2003. Moreover, pursuant to Rule 7050(d)(3)(C), the hourly fees would not be applied thereafter to a new FIX subscriber until 30 days after it commences testing.

2. 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. The proposed fees for FIX connectivity and testing are similar in structure and dollar amount to existing fees for CTCI and API connectivity and testing.

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,¹⁰ and subparagraph (f)(2) of Rule 19b-4 thereunder,¹¹ in that it establishes or

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

⁷ CTCI and API can be used to access a range of Nasdaq systems, including SuperMontage, ACT and Nasdaq InterMarket. At the time of its introduction in late August 2003, however, FIX will provide access solely to SuperMontage. Based on user demand, Nasdaq will evaluate whether to make additional Nasdaq functionality available through FIX in the future.

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)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).