

that the NASD should have the authority to take action against any member that is not in capital compliance.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR–NASD–2003–74), as amended, be, and it hereby is, approved.

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. 34–48442; File No. SR–NASD–2003–98]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Clarify Reporting Requirements for Transactions Conducted Through Electronic Communications Networks

September 4, 2003.

On June 19, 2003, the National Association of Securities Dealers, Inc. (“NASD”), through its subsidiary, The Nasdaq Stock Market, Inc. (“Nasdaq”) submitted to the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to clarify the reporting requirements applicable to transactions conducted through electronic communication networks (“ECNs”). On July 11, 2003, Nasdaq submitted Amendment No. 1 to the proposal.<sup>3</sup> The **Federal Register** published the proposal, as amended, for comment on August 4, 2003.<sup>4</sup> The Commission received one comment letter supporting the proposal.<sup>5</sup>

Nasdaq has stated that it allows ECNs to adopt different methodologies for reporting transactions to the Automated Confirmation Transaction Service (“ACT”) in order to accommodate their varying business needs. Nasdaq believes, however, that the absence of clearly defined rules on the ACT trade reporting requirements has created some confusion for ECNs and their subscribers. Nasdaq proposed these rule changes to provide greater clarity and certainty regarding the ACT trade reporting requirements for ECNs and their subscribers. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association<sup>6</sup> and, in particular, the requirements of section 15A(b)(6) of the Act,<sup>7</sup> which requires, among other things, that the rules of a national securities association foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The Commission believes that the proposed rules will provide ECNs and subscribers with necessary guidelines to facilitate their compliance with ACT trade reporting requirements. Therefore, the Commission finds the proposed rule changes are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR–NASD–2003–98), as amended, is approved.

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. 34–48452; File No. SR–NASD–2003–118]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change By the National Association of Securities Dealers, Inc. To Introduce Fees for Persons That Are Not NASD Members Using the Financial Information Exchange Protocol to Connect to Nasdaq

September 5, 2003.

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 July 31, 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. 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 is filing this proposed rule change to propose connectivity and testing fees for persons that are not NASD members wishing to use the Financial Information Exchange (“FIX”) protocol to connect to Nasdaq.<sup>3</sup> Nasdaq proposes to implement the change to Rule 7050(d) for non-members immediately upon Commission approval, and to implement the change to Rule 7010(f) for non-members on the later of August 25, 2003, or the date of Commission approval of the proposed rule change.

The text of the proposed rule change is set forth below. Proposed new language is in italics; proposed deletions are in [brackets].

#### 7000. Charges For Services and Equipment

##### Rule 7010. System Services

- (a)–(e) No change.
- (f) Nasdaq Workstation™ Service
- (1) No change.

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> Nasdaq is also submitting a proposed rule change to introduce these fees for NASD members. See Securities Exchange Act Release No. 48387 (August 21, 2003), 68 FR 51619 (August 27, 2003) (SR–NASD–2003–117).

<sup>8</sup> 15 U.S.C. 78(b)(2).

<sup>9</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> See Letter from John M. Yetter, Associate General Counsel, Nasdaq to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated July 10, 2003 (“Amendment No. 1”). Nasdaq filed Amendment No. 1 to revise portions of the proposed rule text contained in the original filing.

<sup>4</sup> Securities Exchange Act Release No. 48239 (July 28, 2003), 68 FR 45871.

<sup>5</sup> See Letter from William O'Brien, Chief Operating Officer, Brut, LLC to the Commission, dated August 25, 2003.

<sup>6</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78o–3(b)(6).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30–3(a)(12).