

Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a 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. The proposed rule change was published for comment in the **Federal Register** on September 12, 2003.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

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.⁴ Specifically, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,⁵ 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.

The Commission finds that the proposed rule change is reasonably designed to accomplish these ends because the introduction of the FIX protocol as a means of accessing SuperMontage will expand the connectivity options available to Nasdaq's subscribers, and thereby enhance transparency in SuperMontage. In addition, the Commission notes that Nasdaq has represented that the proposed fees for FIX connectivity and testing are similar in structure and dollar amount to existing fees for computer-to-computer interface ("CTCI") and application programming interface ("API") connectivity. The Commission notes further that firms that already have dedicated CTCI circuits will be able to use FIX over their existing circuits, and therefore will not require that new circuits be installed. Firms that do not already have CTCI circuits may either obtain circuits to support both CTCI and FIX at the same prices that currently apply to CTCI, or may opt to obtain circuits to support FIX alone at a reduced price. The Commission believes that the proposed rule supports the efficient use of existing systems and ensures that the

charges associated with such use are allocated equitably.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change (SR-NASD-2003-118), be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48632; File No. SR-NYSE-2003-25]

Self Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Continuing Annual Fees for "Repackaged" Securities

October 15, 2003.

On August 28, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 Section 902.02 of the NYSE's Listed Company Manual to implement certain changes to the continuing annual listing fees payable in connection with certain structured products called "repackaged" securities ("Repacks"), and to reinstate the Exchange's "15-year" policy with respect to previously listed Repacks.

The proposed rule change was published for comment in the **Federal Register** on September 10, 2003.³ The Commission received no comments on the proposal.

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 exchange⁴ and, in particular, the requirements of Section 6 of the Act⁵ and the rules and regulations thereunder. The Commission finds

specifically that the proposed rule change is consistent with Section 6(b) of the Act,⁶ and in particular with Section 6(b)(4) of the Act,⁷ in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Commission believes that reinstatement of the "15-year" policy for Repacks listed prior to January 1, 2003, should eliminate the unintended consequence of imposing an economic burden on Repack trusts that do not have sufficient funding to pay continuing annual listing fees because the trust had relied on the policy. The Commission notes that, with respect to Repacks listed after January 1, 2003, the continuing annual listing fees will be applicable to Repacks at the time of listing and will remain in effect for the life of the security (*i.e.*, the "15-year" policy will not apply). The Commission believes that the proposed rule change should provide guidance as to applicable fees for present and future Repacks⁸ and should provide trust depositors with notice for Repacks listed after January 1, 2003 to reserve funding to pay continuing annual listing fees.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (File No. SR-NYSE-2003-25) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 48452 (September 5, 2003), 68 FR 53767.

⁴ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78o-3(b)(5).

⁶ 15 U.S.C. 78(b)(2).

⁷ 17 CFR 200.30-3(a)(12).

⁸ 15 U.S.C. 78s(b)(1).

⁹ 17 CFR 240.19b-4.

¹⁰ See Securities Exchange Act Release No. 48429 (September 3, 2003), 68 FR 53411.

¹¹ 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).

¹² 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ The proposed rule change is effective from the date of this approval order and cannot be applied retroactively.

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).