

transactions, regardless of whether dealers report two transactions to the MSRB.<sup>9</sup>

Consistent with the Board's previous decisions,<sup>10</sup> the transaction reporting system will continue to treat two transactions that constitute "matched" or "crossed" transactions like other trades. In the general case, only the dealer that effects a purchase and subsequent sale could identify the two trades as crossed agency trades or matched riskless principal transactions. The transaction reporting system does not require dealers to match the two sides of agency trades nor specifically to match or identify riskless principal transactions. Therefore, it is not possible to count those trades differently in the current system for purposes of the T+1 reporting threshold.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

- (a) by order approve such proposed rule change, or
- (b) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule 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 submissions, 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 the filing will also be available for inspection and copying at the MSRB's principal offices. All submissions should refer to File No. SR-MSRB-2002-10 and should be submitted by November 8, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-26515 Filed 10-17-02; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-46632; File No. SR-NASD-2002-96]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Computer-to-Computer Interface Fees**

October 9, 2002.

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 17, 2002, 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. On September 27, 2002, Nasdaq filed Amendment No. 1 to the proposed rule change.<sup>3</sup> Amendment No. 1 requested that the proposed rule change be considered filed pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders a proposed rule change effective upon filing with the Commission.<sup>6</sup> 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 proposes to amend Rule 7010 to implement a retroactive reduction in the fees assessed on NASD members and non-members that used x.25 Computer-to-Computer Interface ("CTCI") lines after January 31, 2002. Nasdaq will implement the proposed rule change 30 days after the date of filing.

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

**Rule 7010. System Services**

\* \* \* \* \*

(f) Nasdaq Workstation™ Service

\* \* \* \* \*

(3) The following charges shall apply for each CTCI subscriber\*:

Options	Price
Option 1: Dual 56kb lines (one for redundancy) and single hub and router.	\$1275/month.
Option 2: Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy).	\$1600/month.

<sup>9</sup> *Id.*

<sup>10</sup> In 1994, a commentator made a similar suggestion with reference to the Board's filing that initiated the transaction reporting program. The commentator a brokers' broker, suggested that the Board should count as one transaction the situation in which a brokers' broker purchases securities from a dealer and sells them to another dealer. The Board noted in its reply that these are "riskless principal" transactions and that other dealers may also riskless principal transactions. The Board noted that its transaction reporting system would treat the sale to the intermediate dealer (e.g., the brokers' broker) and the intermediate dealer's

subsequent sale as two transactions, and that it would treat these trades like any other trades.

<sup>11</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 Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 27, 2002 ("Amendment No. 1"). The proposal was originally filed for notice and comment under Section 19(b)(2) of the Act. In Amendment No. 1, NASD revised its proposal to

stipulate that all subscribers would receive a credit of \$625 per month per .25 computer-to-computer circuit between February 1, 2002 and the date that circuits were terminated. Amendment No. 1 also clarified how the credits would be provided to subscribers.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> For purposes of calculating the 30-day delayed operative date and the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on September 27, 2002, when Amendment No. 1 was filed.

Options	Price
Option 3: Dual T1 lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy). Includes base bandwidth of 128kb.	\$8000/month.
Option 1, 2, or 3 with Message Queue software enhancement .....	Fee for Option 1, 2, or 3 (including any Bandwidth Enhancement Fee) plus 20%.
Disaster Recovery Option: Single 56kb line with single hub and router. (For remote disaster recovery sites only).	\$975/month.
Bandwidth Enhancement Fee (for T1 subscribers only) .....	\$4000/month per 64kb increase above 128kb T1 base.
Installation Fee .....	\$2000 per site for dual hubs and routers.
Relocation Fee (for the movement of TCP/IP—capable lines within a single location).	\$1000 per site for single hub and router.
	\$1700 per relocation.

\* As reflected in SR–NASD–00–80 and SR–NASD–00–81, *Nasdaq began replacing x.25 CTCI circuits [are being replaced] with TCP/IP CTCI circuits in January 2001.* Pursuant to SR–NASD–2001–87 and SR–NASD–2001–88, the fee for x.25 CTCI circuits—which [has] had remained \$200 per month per circuit—[is] was increased to \$1,275 per month per circuit from February 1, 2002 until the date of the termination of such circuits. Pursuant to SR–NASD–2002–96, users of x.25 CTCI circuits will receive a credit of \$625 per month per circuit from February 1, 2002 until the date of circuit termination.

\* \* \* \* \*

**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's CTCI network is a point-to-point dedicated circuit connection from the premises of brokerages and service providers to Nasdaq's Trumbull, Connecticut processing facilities. Through CTCI, firms are able to enter trade reports into Nasdaq's Automated Confirmation Transaction Service and orders into Nasdaq's transaction execution systems.

In response to numerous requests from market participants that Nasdaq upgrade the speed and reliability of its CTCI data transmission environment, Nasdaq began the process in January 2001 of "sunsetting" its CTCI x.25/bisynch network in favor of a new

network that provides greater capacity and a more efficient transmission protocol. The new CTCI network operates over the Enterprise Wide Network II ("EWN II") and provides connectivity over more powerful 56kb and T1 data lines. In addition, the new CTCI network uses the industry-standard Transmission Control Protocol/Internet Protocol ("TCP/IP"), a transmission protocol that is robust, efficient, and well known among the technical community.

In December 2001, Nasdaq filed proposed rule changes to increase the monthly charge for x.25 CTCI circuits that remained in use from \$200 to \$1,275 per circuit per month, from February 1, 2002 until the date of circuit termination.<sup>7</sup> The fee increase was designed to provide users that had failed to convert from x.25 CTCI circuits to TCP/IP circuits with a financial incentive to complete conversions in a timely fashion and to pass through the increasing per circuit costs of the obsolete x.25 CTCI network to firms that had failed to transition. In May 2002, Nasdaq completed the process of "sunsetting" all x.25 CTCI circuits: All members and non-members that access Nasdaq through CTCI have now been transitioned to TCP/IP lines.

During the process of transitioning from x.25 CTCI to TCP/IP, several member firms approached Nasdaq to request that it support the use of Message Queue Series ("MQ Series") software over the TCP/IP lines. MQ Series is a commercially available messaging product that provides firms with the ability to integrate disparate systems over a common application

programming interface ("API") messaging infrastructure. There are over twenty operating systems that are supported by MQ Series, including Windows, Solaris, Mac OS, and Linux. Firms that use MQ Series are able to establish networks with less effort, skill, and resources, thereby achieving a seamless interconnection of disparate communications systems, and can make use of a comprehensive family of APIs designed to make coding for any messaging task straightforward. Because it believed that offering MQ Series would be a significant benefit to firms that use TCP/IP lines, Nasdaq agreed to work with a pilot group of five member firms to test lines that use the software before making it available to all members and non-members.

Unfortunately, Nasdaq experienced numerous delays in scheduling time to establish and test the lines using MQ Series, largely as a result of the need to devote resources to restoring primary CTCI service to firms following the September 11 terrorist attacks. As a result, Nasdaq could not make the TCP/IP lines that it had promised to the pilot firms available in a timely fashion, and these firms continued to use x.25 CTCI lines after the higher prices established by SR–NASD–2001–87 went into effect. TCP/IP lines using MQ Series began to go into production for the pilot firms during the period from April to May 2002. As of June 2002, Nasdaq began making lines using MQ Series available to all users of TCP/IP CTCI lines.<sup>8</sup>

<sup>7</sup> Securities Exchange Act Release No. 45264 (January 10, 2002), 67 FR 2942 (January 22, 2002) (SR–NASD–2001–87) (notice of filing and immediate effectiveness of proposal related to CTCI fees assessed on members); Securities Exchange Act Release No. 45411 (February 6, 2002), 67 FR 6776 (February 13, 2002) (SR–NASD–2001–88) (order approving proposal to increase CTCI fees assessed on non-members). As indicated, the fee increase for members was effective immediately upon filing, and the increase for non-members was approved by the Commission.

<sup>8</sup> See Securities Exchange Act Release No. 46111 (June 25, 2002), 67 FR 44490 (July 2, 2002) (SR–NASD–2002–82) (notice of filing and immediate effectiveness of proposal to establish fees assessed on members for TCP/IP lines using MQ Series software); Securities Exchange Act Release No. 46112 (June 25, 2002), 67 FR 44488 (July 2, 2002) (SR–NASD–2002–83) (notice of filing of proposal to establish fees assessed on non-members for TCP/IP lines using MQ Series software); Securities Exchange Act Release No. 46356 (Aug. 15, 2002), 67 FR 54249 (Aug. 21, 2002) (SR–NASD–2002–83) (order approving proposal to establish fees assessed on non-members for TCP/IP lines using MQ Series software).

Nasdaq believes that the pilot firms' agreement to provide valuable support to Nasdaq's effort in establishing infrastructure, testing, and support processes for TCP/IP lines using MQ Series will benefit all other firms that choose to make use of this software enhancement. Moreover, the fact that these firms continued to use x.25 CTCL lines after January 31, 2002 was attributable to delays on Nasdaq's part. Accordingly, Nasdaq believes that the pilot firms should receive a reduction in the charges assessed for x.25 CTCL after January 31, 2002. In accordance with guidance received from Commission staff, however, Nasdaq will provide a fee reduction not only to the MQ pilot firms, but also to all other members and non-members that used x.25 CTCL after January 31, 2002. The fee reduction will be provided by means of a credit that will appear on the bills mailed to subscribers in November 2002 (and/or a direct payment, to the extent that the amount of the credit exceeds the amount of charges).<sup>9</sup>

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>10</sup> including Section 15A(b)(5) of the Act,<sup>11</sup> 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, and Section 15A(b)(6) of the Act,<sup>12</sup> which requires rules that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

### *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, 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

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)<sup>13</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

At any time within 60 days of the filing of the 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.<sup>15</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the amended proposed rule change 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-2002-96 and should be submitted by November 8, 2002.

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> For purposes of calculating the 30-day delayed operative date and the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on September 27, 2002, when Amendment No. 1 was filed.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 02-26516 Filed 10-17-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46648; File No. SR-NASD-2002-135]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish Maximum Execution Fees and Liquidity Provider Rebates for SuperMontage Transactions in Low-Priced Securities**

October 11, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on October 2, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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 proposes to establish caps on the SuperMontage order execution charges and liquidity provider credits applicable to Non-Directed and Preferred Orders for securities that are priced at \$1.00 or less per share. Nasdaq will begin implementation of the rule change in conjunction with the initiation of trading on SuperMontage (currently scheduled for October 14, 2002). Because the transition from the current SuperSOES, SOES, and SelectNet environment to SuperMontage will occur over the course of several weeks, with stocks moving from one system to the other in stages, Nasdaq will continue to charge its filed prices for SuperSOES, SOES, SelectNet, and quotation updates for stocks that have

<sup>16</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>9</sup> Telephone conversation between John Yetter, Assistant General Counsel, Nasdaq, and Jennifer Colihan, Special Counsel, Division, Commission, October 9, 2002.

<sup>10</sup> 15 U.S.C. 78o-3.

<sup>11</sup> 15 U.S.C. 78o-3(b)(5).

<sup>12</sup> 15 U.S.C. 78o-3(b)(6).