

requirements are consistent with the extension of those securities.

The proposal also permits the extension of good faith margin to certain non-equity securities held in exempt accounts. The Commission notes that the definition of exempt account is limited to certain regulated entities as well as to persons with net worth of at least \$40 million and financial assets of at least \$45 million about whom certain information is publicly available or who make available to the broker-dealer certain current financial information. The Commission believes that these requirements are important to the broker-dealer's evaluation of the creditworthiness of the exempt account borrower and its ability to make an informed decision regarding an extension of good faith margin to the exempt account.

The Commission also notes that the proposal limits the amount of capital charges a broker-dealer may take in lieu of collecting marked to the market losses. Specifically, a broker-dealer may not enter into transactions with exempt accounts that would increase the broker-dealer's capital charges if the broker-dealer's capital charges exceed: (1) 5% of the broker-dealer's tentative net capital on any one account or group of commonly controlled accounts; or (2) 25% of the broker-dealer's tentative net capital on all accounts combined, unless the excess no longer exists on the fifth business day after it was incurred. In addition, the proposal requires broker-dealers to maintain a written risk analysis methodology for assessing the amount of good faith credit extended to exempt accounts and assures that a broker-dealer has procedures for determining, approving, and monitoring extensions of credit to exempt accounts. The Commission believes that these requirements establish important safeguards to minimize potential risks to a broker-dealer.

Accordingly, the Commission finds that the proposed rule change is consistent with section 15A(b)(6) of the Exchange Act,<sup>32</sup> which requires, among other things, that the rules of a national securities association be designed to promote just and equitable principles of trade, and to protect investors and the public interest.

The Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment Nos. 1 and 2 strengthen the proposal by providing guidelines for the written risk analysis methodology that

NASD members must develop and maintain, and by requiring a person seeking exempt account status to meet specific registration and reporting requirements, or to provide certain current information concerning the person's ownership, business, operations, and financial condition. In addition, Amendment Nos. 1 and 2 conform the NASD's proposal to an NYSE proposal that the Commission approved previously.<sup>33</sup> Accordingly, the Commission finds that there is good cause, consistent with sections 15A(b)(6) and 19(b) of the Exchange Act, to approve Amendment Nos. 1 and 2 on an accelerated basis.

#### V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2, including whether Amendment Nos. 1 and 2 are consistent with the Exchange 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-00-08 and should be submitted by September 23, 2003.

#### VI. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Exchange Act,<sup>34</sup> that the proposed rule change (SR-NASD-00-08), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>35</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-22229 Filed 8-29-03; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>33</sup> See NYSE Order, *supra* note 27.

<sup>34</sup> 15 U.S.C. 78s(b)(2).

<sup>35</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48395; File No. SR-NASD-2003-124]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Institute an Hourly Maintenance Fee Associated With the Use of the Nasdaq Workstation II Service by Persons That Are Not NASD Members

August 22, 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 August 6, 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.<sup>3</sup> Nasdaq has designated the proposed rule change as constituting a "non-controversial" rule change under section 19(b)(3)(A)(iii) of the Act,<sup>4</sup> and paragraph (f)(6) of Rule 19b-4 under the Act,<sup>5</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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 institute an hourly fee for maintenance services supplied for equipment used in connection with the Nasdaq Workstation™ II ("NWII") service.<sup>6</sup> Nasdaq proposes to implement the proposed rule change thirty days after August 6, 2003.<sup>7</sup>

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> On August 12, 2003, Nasdaq filed an amendment to the proposed rule change, which it subsequently withdrew. Telephone conversation between John M. Yetter, Associate General Counsel, Nasdaq, and Frank N. Genco, Division of Market Regulation ("Division"), Commission, on August 19, 2003.

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

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

<sup>6</sup> This filing applies to persons that are not NASD members. On August 6, 2003, Nasdaq also submitted a proposed rule change to implement an identical charge for NASD members. See File No. SR-NASD-2003-123.

<sup>7</sup> In this filing, Nasdaq is also moving the text of the footnote to NASD Rule 7010(f) into the text of

<sup>32</sup> 15 U.S.C. 78o-3(b)(6).

The text of the proposed rule change appears below. New text is in italics. Deleted text is in brackets.

\* \* \* \* \*

## 7000. Charges for Services and Equipment

### 7010. System Services

(a)–(e) No change.

#### (f) Nasdaq Workstation™ Service

(1) The following charges shall apply to the receipt of Level 2 or Level 3 Nasdaq Service via equipment and communications linkages prescribed for the Nasdaq.

#### Workstation II Service:

Service Charge .....	\$2,035/month per service delivery platform (“SDP”)
Display Charge .....	\$525/month per logon for the first 150 logons \$200/month for each additional logon
Additional Circuit/SDP Charge.	\$3,235/month[*]
<i>PD and SDP Maintenance:</i>	
<i>Monthly maintenance agreement.</i>	\$55/presentation device (“PD”) logon or SDP/month
<i>Hourly fee for maintenance provided without monthly maintenance agreement.</i>	\$195 per hour (two hour minimum), plus cost of parts

A subscriber that accesses Nasdaq Workstation II Service via an application programming interface (“API”) shall be assessed the Service Charge for each of the subscriber’s SDPs and shall be assessed the Display Charge for each of the subscriber’s logons, including logons of an NWII substitute or quote-update facility. API subscribers also shall be subject to the Additional Circuit/SDP Charge.

*A subscriber shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its SDP(s) by placing eight logons on an SDP and obtains an additional SDP(s); in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each “underutilized” SDP(s) i.e., the difference between the number of SDPs a subscriber has and the number of SDPs the subscriber would need to support its logons, assuming an eight-to-one ratio). A subscriber also shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its T1 circuits by*

*placing eighteen SDPs on a T1 circuit; in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each “underutilized” SDP slot on the existing T1 circuit(s). Regardless of the SDP allocation across T1 circuits, a subscriber will not be subject to the Additional Circuit/SDP Charge if the subscriber does not exceed the minimum number of T1 circuits needed to support its SDP, assuming an eighteen-to-one ratio.*

(2) No change.

[\* A subscriber shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its SDP(s) by placing eight logons on an SDP and obtains an additional SDP(s); in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each “underutilized” SDP(s) (i.e., the difference between the number of SDPs a subscriber has and the number of SDPs the subscriber would need to support its logons, assuming an eight-to-one ratio). A subscriber also shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its T1 circuits by placing eighteen SDPs on a T1 circuit; in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each “underutilized” SDP slot on the existing T1 circuit(s). Regardless of the SDP allocation across T1 circuits, a subscriber will not be subject to the Additional Circuit/SDP Charge if the subscriber does not exceed the minimum number of T1 circuits needed to support its SDP, assuming an eighteen-to-one ratio.]

(g)–(u) No change.

\* \* \* \* \*

## 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

The NWII service allows market participants to access SuperMontage and other Nasdaq facilities through Nasdaq’s Enterprise Wide Network II (“EWN II”). Each NWII subscriber location has at least one service delivery platform (“SDP”) that connects to the EWN II by a dedicated T1 circuit pair. The subscriber then connects the workstations used by its employees to the SDP. Workstations may be either Nasdaq Workstation presentation devices (“PDs”) provided by Nasdaq, or workstations and software supplied by the subscriber (often referred to as an “application programming interface” device, or an “NWII substitute”).

Nasdaq currently allows subscribers to contract with Nasdaq for maintenance of their NWII PDs and SDPs on a monthly basis, at the rate of \$55 per PD logon or SDP per month. Maintenance is provided by Nasdaq personnel in the New York metropolitan area and by a contractor in other areas of the country. Nasdaq is now proposing to supplement this monthly maintenance option with an hourly maintenance option for subscribers that may not wish to commit to a monthly maintenance agreement. The fee for maintenance provided without a monthly maintenance agreement will be \$195 per hour, with a two-hour minimum charge for all service calls, plus the cost of parts supplied.

#### 2. Statutory Basis

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

the rule to improve the clarity of the rule’s presentation in the NASD Manual.

<sup>8</sup> 15 U.S.C. 78o–3.

<sup>9</sup> 15 U.S.C. 78o–3(b)(5).

*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 proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder,<sup>11</sup> because the proposal does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and Nasdaq provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change,<sup>12</sup> or such shorter time as designated by the Commission.

At any time within 60 days of August 6, 2003, 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.<sup>13</sup>

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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 filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2003-124 and should be submitted by September 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-22231 Filed 8-29-03; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-48397; File No. SR-Phlx-2003-15]

**Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Prohibition Against Specialists Accepting Discretionary Orders on the Limit Order Book**

August 22, 2003.

On March 13, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with 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 codify the prohibition against specialists accepting discretionary orders on the limit order book. On June 5, 2003, the Phlx amended the proposed rule change.

The proposed rule change, as amended, was published for comment in the **Federal Register** on July 17, 2003.<sup>3</sup> 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 exchange<sup>4</sup> and, in particular, the requirements of Section 6 of the Act<sup>5</sup> and the rules and regulations thereunder. The Commission finds

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 48160 (July 17, 2003), 68 FR 42452.

<sup>4</sup> 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).

<sup>5</sup> 15 U.S.C. 78f.

specifically that the proposed rule change is consistent with Section 6(b)(6)<sup>6</sup> of the Act because it should clarify for Exchange specialists the types of orders that they may, and may not, accept onto the limit order book.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-Phlx-2003-15) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-22294 Filed 8-29-03; 8:45 am]

**BILLING CODE 8010-01-P**

**UNITED STATES SENTENCING COMMISSION**

**Sentencing Guidelines for United States Courts**

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of final priorities.

**SUMMARY:** In June 2003, the Commission published a notice of possible policy priorities for the amendment cycle ending May 1, 2004. See 68 FR 39173 (July 1, 2003). After reviewing public comment received pursuant to this notice, the Commission has identified its policy priorities for the upcoming amendment cycle. The Commission hereby gives notice of these policy priorities.

**FOR FURTHER INFORMATION CONTACT:** Michael Courlander, Public Affairs Officer, Telephone: (202) 502-4590.

**SUPPLEMENTARY INFORMATION:** The United States Sentencing Commission, an independent commission in the judicial branch of the United States Government, is authorized by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for Federal courts. Section 994 also directs the Commission periodically to review and revise promulgated guidelines and authorizes it to submit guideline amendments to Congress not later than the first day of May each year. See 28 U.S.C. 994(o), (p).

As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the Federal sentencing guidelines, the Commission has identified certain priorities as the focus of its policy development work, including possible

<sup>6</sup> 15 U.S.C. 78f(b)(6).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> On July 28, 2003, Nasdaq provided the Commission with written notice of its intent to file the proposed rule change. See letter from John M. Yetter, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated July 28, 2003.

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