

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47637; File No. SR-NASD-2003-47]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify the Display Charge Associated With the Use of the Nasdaq Workstation II Service by NASD Members

April 7, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 21, 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 proposes to modify the display charge paid by NASD members for use of the Nasdaq Workstation II ("NWII") Service.³ Nasdaq proposes to implement the proposed rule change on April 1, 2003.

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

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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—[\$1,875/month per service delivery platform ("SDP") from December 1, 2000 through February 28, 2001] \$2,035/month per *service delivery platform* ("SDP") [beginning March 1, 2001]
Display Charge—\$525/month per [presentation device ("PD")] *logon*

for the first 150 logons \$200/month for each additional logon
Additional Circuit/SDP Charge—[\$3,075 per month from December 1, 2000 through February 28, 2001, and] \$3,235/month [beginning March 1, 2001]*

Maintenance—\$55/[SDP or] *presentation device* ("PD") *logon or SDP/month*

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 [API linkages] *logons*, including *logons of an NWII substitute or quote-update facility*. API subscribers also shall be subject to the Additional Circuit/SDP Charge.

(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 [PDs and/or API servers] *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* [PDs and/or API servers], 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)-(s) 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

The NWII service allows market participants to access The Nasdaq Stock Market and other Nasdaq facilities through Nasdaq's Enterprise Wide Network II ("EWN II"). To use the NWII service, each 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. Thus, the SDP functions as the gateway from the subscriber's workstations to the EWN II.

Different subscribers use different types of workstations. A subscriber may use either an "NWII presentation device" (a workstation and associated software provided by Nasdaq) or its own workstation and software (often referred to as an "application programming interface" device, or an "NWII substitute"), and many subscribers use both options. Each workstation, however, is associated with a particular "logon,"⁴ the code that a user enters to identify himself or herself as an authorized NWII user and thereby gain access to the NWII service. Nasdaq currently assesses a "display charge" of \$525 per month for each logon.⁵

Nasdaq represents that, as part of an ongoing effort to reduce costs incurred by Nasdaq's market participants to use its systems and services, Nasdaq is proposing to modify the display charge to reflect the economies of scale realized when providing subscribers with a large number of logons. Specifically, Nasdaq asserts that if a subscriber has more than 150 logons, the per logon average cost to provide NWII service to that subscriber will decrease over a substantial range of additional logons. Moreover, Nasdaq represents that the

⁴ Nasdaq represents that the term "logon" as used throughout the proposed rule change refers to a logon ID (or logon identifier) and not a logon event. Telephone conversation between John M. Yetter, Assistant General Counsel, Nasdaq, and Frank N. Genco, Attorney, Division of Market Regulation ("Division"), Commission, on March 28, 2003.

⁵ Nasdaq notes that NASD Rule 7010(f)(1), as in effect prior to the amendments made by this proposed rule change, uses a variety of terms to refer to the concept reflected in the term "logon." As a part of this proposed rule change, Nasdaq is clarifying the rule by using the term "logon" throughout, and is also removing language describing fees in effect prior to March 1, 2001.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On March 21, 2003, Nasdaq also submitted a proposed rule change to modify this charge for non-members. See File No. SR-NASD-2003-48.

average costs associated with subscriber support also decrease as the number of logons increases. Accordingly, Nasdaq believes that it is reasonable to offer a discount on additional logons to subscribers with more than 150 logons, to reflect the lower average costs associated with providing this volume of logons.⁶ A subscriber will pay the current display charge of \$525 per month per logon for its first 150 logons, and a reduced charge of \$200 per month for each additional logon.⁷ Nasdaq believes that this reduction will also make it more economical for subscribers to install systems with redundancy, which will enable them to remain fully operational even if they experience equipment failures or an unexpected increase in demand.

In determining the number of logons used by a particular subscriber, Nasdaq will permit a particular corporate entity to aggregate its logons with those used by its wholly owned subsidiaries, parent corporations of which it is a wholly owned subsidiary, or affiliated corporations that are wholly owned by a common parent. A subscriber that wishes to aggregate its logons with those of its affiliates in this manner will be required to provide supporting information about its corporate structure to Nasdaq.

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 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.

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.

⁶ Telephone conversation between John M. Yetter, Assistant General Counsel, Nasdaq, and Hong-Anh Tran, Special Counsel, Division, Commission, on April 1, 2003.

⁷ Nasdaq represents that a change to its Tools Plus SDP pricing is not warranted at this time. See also Securities Exchange Act Release No. 46973 (December 9, 2002), 67 FR 77305 (December 17, 2002) (File No. SR-NASD-2002-164).

⁸ 15 U.S.C. 78o-3.

⁹ 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)(ii) of the Act¹⁰ and subparagraph (f)(2) of Rule 19b-4¹¹ thereunder, because it establishes or changes a due, fee, or other charge. At any time within 60 days of March 21, 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.¹²

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-2003-47 and should be submitted by May 2, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-8919 Filed 4-10-03; 8:45 am]
BILLING CODE 8010-01-P

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

¹² See 15 U.S.C. 78(b)(3)(C).

¹³ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47644; File No. SR-NSCC-2003-04]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to NSCC's Insurance Processing Service

April 7, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 14, 2003, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an enhancement to NSCC's Insurance Processing Service ("IPS") that will provide information about insurance products to distributors of those products. The enhancement will allow Insurance Carrier Members and Data Services Only Members of NSCC to populate a series of databases maintained by NSCC (known collectively as the "Product Repository") with information related to insurance products.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified parts of these statements.