

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

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

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii)<sup>5</sup> and subparagraph (e)(2) of Rule 19b-4 thereunder.<sup>6</sup> At any time within 60 days of the filing of the proposed rule change, 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>7</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. 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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of CHX. All submissions should refer to File No.

SR-CHX-98-22 and should be submitted by November 4, 1998.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-40528; International Series Release No. 1161; File No. SR-NASD-98-72]

### **Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Extension of the Nasdaq International Service Pilot Program**

October 7, 1998.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on October 6, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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 by The Nasdaq Stock Market, Inc. ("Nasdaq"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

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

The NASD proposes to extend for one year: (1) the pilot term of the Nasdaq International Service ("Service"); and (2) the effectiveness of certain rules ("International Rules") that are unique to the Service. This proposed rule change does not entail any modification of the International Rules. The present authorization for the Service and the International Rules expires on October 9, 1998. With this proposed rule change, the pilot period for the Service and the International Rules would be extended until October 9, 1999.

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

In its filing with the Commission, the NASD 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 III below. The NASD 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*

#### **I. Purpose**

The NASD proposes to extend for an additional year, until October 9, 1999, the pilot operation of the Service and the effectiveness of the International Rules governing broker-dealers' access to and use of the Service. The existing pilot operation of the Service and the International Rules was originally authorized by the Commission in October 1991<sup>2</sup> and the Service was launched on January 20, 1992. The pilot has since been extended<sup>3</sup> and is currently set to expire on October 9, 1998.<sup>4</sup>

The Service supports an early trading session running from 3:30 a.m. to 9:00 a.m. Eastern Time on each U.S. business day ("European Session") that overlaps the business hours of the London financial markets. Participation in the Service is voluntary and is open to any authorized NASD member firm or its approved broker-dealer affiliate in the U.K. A member participates as a Service market maker either by staffing its trading facilities in the U.S. or the facilities of its approved affiliate during the European Session. The Service also has a variable opening feature that permits Service market makers to elect to participate starting from 3:30 a.m., 5:30 a.m. or 7:30 a.m. Eastern Time. The election is required to be made on a security-by-security basis at the time a

<sup>2</sup> Securities Exchange Act Release No. 29812 (October 11, 1991), 56 FR 50282 (October 17, 1991) (File No. SR-NASD-90-33).

<sup>3</sup> Securities Exchange Act Release No. 33037 (October 8, 1993), 58 FR 53752 (October 18, 1993) (approval of File No. SR-NASD-93-50 extending the pilot for two years through October 11, 1995). Securities Exchange Act Release No. 36359 (October 11, 1995), 60 FR 53820 (October 17, 1995) (approval of File No. SR-NASD-95-45 extending the pilot for two years through October 11, 1997).

<sup>4</sup> Securities Exchange Act Release No. 39216 (October 7, 1997), 62 FR 53673 (October 15, 1997) (approval of File No. SR-NASD-97-72 extending the pilot for 1 year through October 9, 1998).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> 17 CFR 240.19b-4(e)(2).

<sup>7</sup> In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

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

firm registers with the NASD as a Service market maker.<sup>5</sup> At present, there are no Service market makers participating in the Service.

As noted above, the NASD is seeking to extend the pilot term for one year. During this period, the NASD will continue to reevaluate the Service's operation and consider possible enhancements to the Service to broaden market maker participation. The NASD continues to view the Service as a significant experiment in expanding potential opportunities for international trading via systems operated by Nasdaq. Accordingly, the NASD believes this pilot operation warrants an extension to permit possible enhancements that will increase the Service's utility and attractiveness to the investment community.<sup>6</sup> The NASD maintains its belief that it is extremely important to preserve this facility and opportunities it provides, especially in light of the increasingly global nature of the securities markets and the trend of cross-border transactions generally.

In addition, the Service serves an invaluable role as a critical early warning mechanism in the context of significant changes in involving Nasdaq software and hardware systems. Specifically, because the Service operates in the early morning hours prior to the opening of trading in the domestic session of Nasdaq, the Service has provided for the early detection of systems or communications problems when Nasdaq implements these systems' changes.

## 2. Statutory Basis

The NASD believes that the proposed rule change is consistent with sections 11A(a)(1)(B)<sup>7</sup> and (C)<sup>8</sup> and 15A(b)(6) of the Act.<sup>9</sup> Subsections (B) and (C) of section 11A(a)(1)<sup>10</sup> set forth the Congressional goals of achieving more efficient and effective market operations, broader availability of information with respect to quotations for securities, and the execution of investor orders in the best market

through the use of advanced data processing and communications techniques. Section 15A(b)(6)<sup>11</sup> requires, among other things, that the NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, and to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The NASD believes that the proposed extension of the Service and the International Rules is fully consistent with these statutory provisions.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

## III. 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. 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 No. SR-NASD-98-72 and should be submitted by November 4, 1998.

## IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with Sections 11A(a)(1)(B) and (C) and

15A(b)(6) of the Act.<sup>12</sup> The Commission believes that, in connection with the globalization of securities markets, the Service provides an opportunity to advance the statutory goals of: (1) Achieving more efficient and effective market operations; (2) broader availability of information with respect to quotations for securities; (3) the execution of investor orders in the best market through the use of advanced data processing and communications techniques; and (4) fostering cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

The Commission continues to view the Service as a significant experiment in expanding potential opportunities for international trading via systems operated by Nasdaq. The Service is intended to promote additional commitments of member firms' capital to market making and to attract commitments from firms based in Europe that currently do not function as Nasdaq market makers. Although there are no Service market makers participating in the Service, the NASD plans to reevaluate the Service's operating and consider possible enhancements to the Service to broaden market maker participation. Additionally, the Service provides an early warning system when Nasdaq implements significant changes involving its hardware and software systems. Because the Service operates before the opening of the domestic session of Nasdaq, the Service allows for the early detection of systems or communication problems. Accordingly, the Commission believes that this pilot operation warrants an extension to permit possible enhancements that will increase the Service's utility and attractiveness to the investment community. Any changes to the operation of the Service will be filed pursuant to section 19(b)(2) of the Act.<sup>13</sup>

Pursuant to section 19(b)(12) of the Act,<sup>14</sup> the Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof. The Commission believes that it is appropriate to approve on an accelerated basis the one year extension of the Nasdaq International Service, until October 9, 1999, to ensure the continuous operation of the Service,

<sup>5</sup> Regardless of the opening time chosen by the Service market maker, the Service market maker is required to fulfill all the obligations of a Service market maker from that time (i.e., either 3:30 a.m., 5:30 a.m. or 7:30 a.m.) until the European Session closes at 9:00 a.m. Eastern Time. See, Securities Exchange Act Release No. 32471 (June 15, 1993), 58 FR 33965 (June 22, 1993) (approval of File No. SR-NASD-92-54).

<sup>6</sup> Assuming that the pilot term is extended, the NASD will continue to supply the Commission with the statistical reports prescribed in the initial approval for the Service order at six month intervals.

<sup>7</sup> 15 U.S.C. 78k-1(a)(1)(B).

<sup>8</sup> 15 U.S.C. 78k-1(a)(1)(C).

<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

<sup>10</sup> 15 U.S.C. 78k-1(a)(1).

<sup>11</sup> 15 U.S.C. 78o-3(b)(6).

<sup>12</sup> In reviewing this proposal, the Commission has considered its potential impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> *Id.*

which is set to expire on October 9, 1998.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change be, and hereby is, approved.

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

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40521; File No. SR-NASD-98-63]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Fees for Nasdaq's Workstation II Service for Those Subscribers Who Are Not Members of the NASD

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 20, 1998, as amended on September 15, 1998,<sup>3</sup> the National Association of Securities Dealers, Inc. ("NASD") through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "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 proposing to amend NASD Rule 7010(h)(2) relating to Nasdaq Workstation II ("NWII") and network fees. The proposed rule change is intended to amend the current fee schedule for subscribers to the NWII service who are not NASD members. The NASD has filed a parallel rule filing to effect the same amendments to the NWII fee structure to apply to NASD

members.<sup>4</sup> Nasdaq also is eliminating Digital Interface Service fees as Nasdaq no longer provides this service. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

\* \* \* \* \*

#### NASD Rule 7010. System Services

(a)-(g) No Change

(h) Nasdaq Workstation Service

(1) No Change

(2) 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 .....	[S100]S1,500/month per [server] <i>service delivery platform</i> ("SDP").
Display Charge .....	[S500]S525/month per presentation device ("PD").
Additional Circuit/SDP Charge .....	[S1,150 per]S2,700/month. *

*A subscriber that access 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, including an NWII substitute or quote-update facility. API subscribers also shall be subject to the Additional Circuit/SDP Charge.*

(3) No Change

(j) Digital Interface Service

The following charges shall apply to the receipt of Level 3 Nasdaq service via the Digital Interface Service:

Service Charge.	\$1,300/month per server.
Display Charge.	\$345/month per terminal display.
Additional Circuit.	\$500/month.
Equipment Charge.	\$290/month per server].

(k)-(n) Re-designated as subparagraphs (j)-(m)

*\*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 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 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 existing T1 circuit(s) by placing six SDPs on a T1 circuit and obtains an additional T1 circuit(s); in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the Service Charge) for each "unutilized" slot on the existing T1 circuit(s). Regardless of 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 SDPs, assuming a six-to-one ratio.*

\* \* \* \* \*

#### 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

The purpose of this filing is to amend the subscriber fees applicable for subscribers to Nasdaq Workstation II ("NWII") who are not NASD members. In 1994, Nasdaq rolled out the NWII service, which provided many

required from subscribers who ordered NWII service starting in July 1998, stated Nasdaq's intent to bill the new fee structure retroactively for non-member subscribers who receive EWN II technology prior to the approval of this proposed rule change, and made technical corrections to the filing.

<sup>4</sup>See File No. SR-NASD-98-62.

<sup>15</sup> *Id.*

<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>3</sup> On September 23, 1998, Nasdaq filed Amendment No. 1 with the Commission. See Letter from Robert Aber, Senior vice President and

General Counsel, Nasdaq, to Richard Strasser, Assistant director, Division of Market Regulation ("Division"), Commission, dated September 23, 1998. Amendment No. 1 clarified the circumstances under which Nasdaq would apply the Additional Circuit. SDP Charge to subscribers, clarified the way that Nasdaq would adjust the size of the deposits