

which is set to expire on October 9, 1998.

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

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-27511 Filed 10-13-98; 8:45 am]

BILLING CODE 8010-01-M

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"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 20, 1998, as amended on September 15, 1998,³ 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.⁴ 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.

⁴See File No. SR-NASD-98-62.

¹⁵ *Id.*

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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

enhancements to the then-existing Nasdaq Workstation service.⁵ As part of the NWII rollout, Nasdaq installed a network, known as the Enterprise Wide Network ("EWN I"), to deliver NWII functionality. To access NWII service, each subscriber location has at least one service delivery platform ("SDP"), or server, that resides on the network and connects to Nasdaq by a dedicated circuit. The SDP functions as the subscriber's gateway from the NWII to the enterprise-wide network.⁶ Each SDP currently is permitted to support up to eight presentation devices ("PD"), or Nasdaq Workstation IIs,⁷ although a firm may elect to have fewer than eight PDs on a single SDP. In addition, a subscriber may obtain NWII service through an application programming interface ("API"), which essentially allows a firm to obtain NWII Service using the firm's own hardware (e.g., personal computer) and software systems to access, display, interface with, and operate NWII service.⁸

Due to the ongoing growth in the Nasdaq market and unprecedented increases in daily share volume since EWN I was installed, Nasdaq became concerned that its existing enterprise-wide network capacity was rapidly approaching maximization. Specifically, the network's bandwidth—the amount of data that can be transmitted through a given communications circuit in a fixed amount of time—currently can handle one and one-half billion shares per day. The 1998 average daily share volume to date is 750 million, with a high single-day volume of 1.250 billion shares. In addition, on October 28, 1997, Nasdaq experienced its largest daily share volume ever with 1,354,164,600 shares traded. In Nasdaq's view, these dramatic increases in average and peak

share volumes clearly mandate the creation of a new network with increased capacity.

Moreover, based on the average rate of circuit additions for both new and existing subscribers, EWN I is expected to reach maximum circuit capacity during the second quarter of 1999.⁹ To respond to these concerns and to avoid the potential for any disruption to the Nasdaq market, Nasdaq contracted in late 1997 with MCI Communications Corporation ("MCI") to build a new network—EWN II—to accommodate increased usage and provide increased circuit capacity.

Nasdaq notes that concerns about present and future system capacity have been repeatedly expressed by the Commission as part of its releases recommending that self-regulatory organizations voluntarily establish automation review policies to comprehensively plan, test, and assess the trading capacity of their systems.¹⁰ This emphasis on sufficient trading-system capacity reflects the Commission's recognition of the significant negative impact system failures can have on public investors, broker-dealer risk exposure, and market efficiency. Moreover, Congress has specifically found that "the maintenance of stable and orderly markets with maximum capacity for absorbing trading imbalances without undue price movements" is a paramount objective of a national market system.¹¹ EWN II is Nasdaq's response to these mandates.

EWN II will be a significant improvement over EWIN I. First, EWN II will have a four billion share per day capacity by the year 2001, with the additional capability to be expanded to a daily eight billion share capacity. EWN II's design contains certain features that are aimed at significantly reducing the likelihood of a network failure. These features are designed to

ensure that Nasdaq, and the market professionals and individual investors who rely on its facilities, are provided with the most robust and flexible system available, thereby ensuring the smooth functioning of the public securities markets both now and in the future.

Nasdaq shortly will begin converting existing subscribers to EWN II. Specifically, on or about September 1, 1998, Nasdaq will begin replacing subscribers' existing dedicated circuits to accommodate the new network. The installation process should be completed by May 1999. As with previous technology roll-outs (e.g., EWIN I and NWII), the EWN II conversion will be implemented regionally and each firm will be pre-scheduled for a particular conversion date.¹²

In light of the increased costs and value-added benefits of EWN II, Nasdaq is proposing to revise the current NWII fee structure. Under the proposal, the fee charged to a subscriber for an SDP would change from \$100 per month for each server to \$1,500 per month for each server. The display charge would change from \$500 per month for each PD to \$525 per month for each PD. The charge associated with an unutilized or underutilized circuit or SDP would change from \$1,150 per month to \$2,700 per month.¹³ Thus, under the new fee

¹² See Securities Exchange Act Release No. 35189 (January 3, 1995), 60 FR 3014 (January 12, 1995) (EWN I rollout). Thus, while the rollout proceeds, some subscribers will continue to utilize EWN I and pay the fees for that service, until they are upgraded to EWN II.

¹³ As noted above, a T1 circuit supports up to six SDPs, and an SDP supports up to eight PDs. 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 circuits 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 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.

For example, if a subscriber has four SDPs (each with eight PDs) on an existing T1 circuit, and the subscriber orders a second T1 circuit on which the subscriber places one SDP (with eight PDs), the subscriber would pay on a monthly basis: 1) \$1,500 for each of the four fully utilized SDPs on the first T1 circuit, plus \$525 for each of the PDs on the circuit; 2) \$2,700 for each of the two unutilized SDP

⁵ NWII provides a widows-based environment and several data management facilities not previously available in Nasdaq's former (pre-1994) workstation service.

⁶ Under EWN I, each dedicated circuit supported one SDP. Under Nasdaq's proposed new network—known as "EWN II"—each dedicated circuit ("T1 circuit") will be capable of supporting up to six SDPs.

⁷ This also will be true for EWN II.

⁸ API provides an electronic interface between a subscriber's systems and the NWII system. Through the use of the API, a subscriber may build its own workstation presentation software to integrate the NWII service into the subscriber's existing presentation facilities. The API allows a subscriber to emulate the NWII presentation software with equivalent functionality, capacity utilization and throughput capability, in addition to providing enhanced capability to develop customized internal presentations for use in support of subscriber's activities. API also allows a subscriber to operate a quote-update facility to assist solely in complying with the SEC's Order Handling Rules. Generally, a subscriber establishes an API "linkage," such as an NWII substitute or quote-update facility, which in turn connects to an SDP via an API server.

⁹ Similar to any other private network, EWN I was designed to have a maximum circuit capacity (i.e., 2,100 circuits). In 1995, the projected average circuit growth between 1995 and 1999 was estimated to be seven circuits per month, so that by 1999 there would be a total of 1,400 circuits. In 1996, however, there was an average growth of 35 circuits per month. For 1998, Nasdaq is averaging 10 circuits per month. Nasdaq projects that by 1999, there will be 2,100 circuits, and that Nasdaq will exhaust circuit capacity without the EWN II upgrade.

¹⁰ Securities Exchange Act Release No. 27445 (November 16, 1989), 54 FR 48703 (November 24, 1989) (Automation Review Policy); Securities Exchange Act Release No. 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991) (Second Automation Review Policy).

¹¹ See S. Rep. No. 94-75, at 7, reprinted in 1975 U.S.C.A.N. 179, 185 (report accompanying bill enacted as Securities Acts Amendments of 1975) (emphasis added).

structure, a firm with one SDP (\$1,500) and eight PDs ($8 \times \$525 = \$4,200$) would be charged a monthly fee of \$5,700, while a firm with one SDP (\$1,500) and two PDs ($2 \times \$525 = \$1,050$) would be charged a monthly fee of \$2,550.

The proposed rule change also clarifies that the fees in NASD Rule 7010(h)(2) likewise apply to NWII service obtained via API. Specifically, if a subscriber chooses to access NWII through API, the subscriber would be assessed the service charge for each SDP, the display charge for each of the subscriber's linkage (e.g., NWII substitute, quote-update facility), as well as the additional circuit charge.¹⁴

slots on the first circuit; and 3) \$1,500 for the SDP on the second T1 circuit, plus \$525 for each of the PDs on that circuit.

As a second example, if a subscriber has five SDPs (each with eight PDs) on an existing T1 circuit, and the subscriber orders a second T1 circuit on which the subscriber places two SDP (with eight PDs), the subscriber would pay on a monthly basis \$1,500 for each of the SDPs on the first and second T1 circuit, plus \$525 for each of the PDs on the SDPs. The firm would not be subject to the Additional Circuit/SDP Charge because it has seven SDPs and needs two T1 circuits to support this number of SDPs.

As a third example, if a subscriber has on a T1 circuit four SDPs each with four PDs, the subscriber would pay on a monthly basis: 1) \$525 for each of the 16 PDs; and 2) \$1,500 for two of the SDPs and \$2,700 for two SDPs because two SDPs are fully utilized while two SDPs are not. That is, to support the firm's 16 PDs, the firm only needs two SDPs. Thus, there are two "underutilized" or "nonessential" SDPs, for which the firm must pay the Additional Circuit/SDP Charge.

This pricing structure encourages subscribers to maximize circuit capacity and is aimed at preventing the premature exhaustion of such capacity. Furthermore, Nasdaq notes that under EWN II, each T1 will be a dual circuit and that there will be a virtually seamless switch-over from one circuit to the next if one of the circuits fails. Thus, it is anticipated that, due to the new features of EWN II, subscribers will be less likely to order additional circuits without first optimizing capacity on existing circuit(s).

¹⁴ Since July 1998, new subscribers to NWII service have placed work orders for EWN II technology (instead of EWN I technology). During this period, Nasdaq charged new subscribers the required security deposit using the EWN I pricing structure, as the new EWN II pricing structure had not yet been filed. (NASD Rule 7070 provides that new subscribers to Nasdaq Workstation service shall be subject to a deposit in the amount of: estimated telecommunications provider charges for network infrastructure, connection and testing; two months circuit charges; and estimated telecommunications provider disconnect charges.) Nasdaq processed new work orders for EWN II (instead of EWN I) to avoid these subscribers having to pay for the installation and subsequent deinstallation of soon-to-be obsolete EWN I technology, and the installation of EWN II technology in September 1998 (when the upgrade is set to begin).

Upon approval of this filing, new subscribers that are non-members and that have placed work orders from July 1998 forward, will be billed for the security deposit for an amount equal to the differential under the EWN I and the EWN II fee structures. Additionally, if non-member subscribers

Although NASD Rule 7010(h)(2) generally applies to both members and non-member subscribers to NWII service, this filing will only affect a change to the fees charged to those subscribers who are not NASD members. The NASD has filed a separate but virtually identical proposed rule change to impose the proposed new fees on non-member subscribers. Lastly, the proposed rule filing removes the fee schedule for "Digital Interface Service," as Nasdaq no longer offers this service.

Nasdaq believes that the proposed rule change is consistent with the section 15A(b)(5) of the Act,¹⁵ which requires that the rules of a registered securities association 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. Nasdaq notes that the proposed fees, which will only apply to those that utilize NWII service, are reasonable and proportionate to the projected costs of operating and maintaining EWN II.

Although the proposed fees are higher than those associated with EWN I, Nasdaq believes that these fees are both reasonable and necessary. Specifically, Nasdaq notes that EWN II will be faster, more secure, and provide greater capacity, all of which are essential to protecting the integrity of the Nasdaq market and maintaining the confidence of the investing public. In addition, the new fees will more fairly allocate system costs among Nasdaq market participants.¹⁶

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.

receive EWN II technology prior to approval of the EWN II fees proposed herein, upon approval of this filing, Nasdaq will bill these non-member subscribers in an amount equal to the differential under the EWN I and EWN II fee structures. Nasdaq believes that this is a fair approach in that all subscribers should be required to pay the same fees for the EWN II technology, regardless of the timing of their order.

¹⁵ 15 U.S.C. 78o-3(b)(5).

¹⁶ According to Nasdaq, the proposed fee schedule's Service Charge, like the prior fee schedule, does not pass on all of the SDP/server costs that MCI charges the NASD. The proposed fee schedule's Display Charge, like the prior fee schedule, in part helps the NASD recoup its subsidy of the SDP/server costs, and permits the NASD to recoup other expenses associated with the development and the maintenance of NWII. See Conversation between John Malitzis, Senior Attorney, Nasdaq, and Joshua Kans, Attorney, Division, Commission, September 10, 1998.

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

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 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-98-63 and should be submitted by November 4, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-27512 Filed 10-13-98; 8:45 am]

BILLING CODE 8010-01-M

¹⁷ See 17 CFR 200.30-3(a)(12).