

limit of \$30,500 (the "Corporate Financing filing fee").

Section 6(c) of Schedule A and Paragraph (b)(10)(C) of Conduct Rule 2710 currently require that all Corporate Financing filing fees be paid by check or money order. Such a specific provision was originally adopted in order to prevent the payment of filing fees in cash. Since that time, new methodologies have arisen that facilitate the transfer of money. In order to ensure that NASD Regulation has the necessary flexibility to implement newer forms of payment, NASD Regulation proposes to eliminate Section 6(c) of Schedule A and Paragraph (b)(10)(C) of Conduct Rule 2710. Further a conforming change is made to Paragraph (b)(10)(D) of Conduct Rule 2710 to delete the reference to Paragraph (C) of the same section.

Based on this proposal, members may continue to submit Corporate Financing filing fees in the form of a check or money order to the Corporate Financing Department at the same time that the related documents are filed. Cash payment will still not be accepted in accordance with the standard business practice of the Association. The Association will, however, also implement payment of the Corporate Financing filing fee by wire transfer, and intends to inform filers and members generally of this option. In the case where such a wire transfer is used, the payment of the fee on a timely basis will be considered to "accompany" the filing of the original offering documents or amended offering documents to which it relates, as required by Sections 6(a) and (b) of Schedule A and by Paragraphs(b)(10)(A) and (B) of Conduct Rule 2710.

2. Purpose

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) ³ of the Act, which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fee, and other charges among members. The Association believes that the proposed rule change provides for the equitable allocation of the fees paid by members in connection with the submission of proposed public offerings with the Corporate Financing Department for review.

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

NASD Regulation 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) ⁴ of the Act and subparagraph (e) of Rule 19b-4 ⁵ thereunder in that it is concerned solely with the administration of a self-regulatory organization.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 the file No. SR-NASD-98-87 and should be submitted by December 23, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

⁵ 17 CFR 240.19b-4(e)(1).

⁶ 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40716; File No. SR-NASD-98-63]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the 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

November 25, 1998.

I. Introduction

On August 20, 1998, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, The Nasdaq Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to modify the fees that the NASD charges non-NASD members receiving Nasdaq Workstation II ("NWII") service. Nasdaq amended the filing on September 10, 1998.³

The Commission published notice of the proposed rule change, in the **Federal Register** on October 14, 1998.⁴ The Commission received no comments specifically directed toward this proposal.⁵ Nasdaq filed a second amendment on November 17, 1998.⁶ For the reasons discussed below, the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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 10, 1998 ("Amendment No. 1").

⁴ Securities Exchange Act Release No. 40521 (October 5, 1998), 63 FR 55167 (October 14, 1998).

⁵ As discussed below, the Commission received comments that were directed toward a parallel proposal, File No. SR-NASD-98-62, which proposed to modify the fees Nasdaq charges NASD members receiving NWII service.

⁶ See Letter from Robert Aber, Nasdaq, to Richard Strasser, Division, Commission, dated November 17, 1998 ("Amendment No. 2"). Amendment No. 2 deleted language, appearing in the **Federal Register** notice, stating that if non-NASD member subscribers received EWN II technology prior to approval of this proposed rule change, then after approval Nasdaq would bill the non-member subscribers in an amount equal to the differential under the EWN I and the EWN II fee structures.

³ 15 U.S.C. 78o-3.

Commission is approving the proposed rule change as amended.

II. Description of the Proposal

The NASD filed this proposed rule change in conjunction with a parallel proposal to modify the fees charged NASD members, File No. SR-NASD-98-62.⁷ The fee schedule set forth in that proposal became effective upon filing in accordance with Section 19(b)(3)(A)(ii) of the Act⁸ and Rule 19b-4.

This proposed rule change would increase the monthly fees for NWII service as follows: the monthly Service Charge would increase from \$100 per "server" to \$1500 per "service delivery platform" ("SDP"); the monthly Display Charge would increase from \$500 to \$525 per presentation device ("PD"); and the monthly "Additional Circuit/SDP Charge" (formerly the "Additional Circuit Charge") would increase from \$1150 to \$2700. This proposed rule change also clarifies that the fee schedule applies to subscribers who access NWII service through an application programming interface ("API"). Finally, the proposal eliminates the Digital Interface Service fee schedule because Nasdaq no longer provides that service.

Nasdaq proposed this fee change in conjunction with the construction of EWN II, a new network for delivering NWII service. Nasdaq is in the process of converting existing subscribers to the EWN II network. During this process, some NWII subscribers will continue to utilize the existing EWN I network and pay the fees for that service, until they are upgraded to EWN II.

To access NWII service, each subscriber location has at least one SDP, or server, that resides on the network and connects to Nasdaq by a dedicated circuit. Under the EWN II network, each dedicated circuit ("T1 circuit") will be capable of supporting up to six SDPs. Each SDP can support up to eight PDs, or Nasdaq Workstation IIs, although a firm may elect to have fewer than eight PDs on a single SDP. A subscriber may also obtain NWII service through an API, which allows a firm to obtain NWII Service using the firm's own hardware (e.g., personal computer) and software systems.

Under the new fee structure, a firm with one SDP (\$1500) and eight PDs ($8 \times \$525 = \4200) would be charged a monthly fee of \$5700 (compared to \$4100 under the existing schedule). A

firm with one SDP (\$1500) and two PDs ($2 \times \$525 = \1050) would be charged a monthly fee of \$2550 (compared to \$1100 under the existing schedule). If a subscriber chooses to access NWII through an API, the subscriber would be assessed the service charge for each SDP, the display charge for each of the subscriber's linkages (e.g., NWII substitute, quote-update facility), as well as the additional circuit charge. The Additional Circuit/SDP charge will apply if a subscriber obtains additional SDPs and/or T1 circuits without first maximizing the capacity on its SDPs and T1 circuits.

Nasdaq justifies the proposed fee structure on the grounds that it is derived from the fee structure in the contract that Nasdaq and MCI Communications Corporation ("MCI") entered into in 1997, under which MCI would build and maintain the new network. Nasdaq represents that the proposed fee structure subsidizes its subscribers, in that the proposed Service Charge does not pass on all of the SDP/server costs that Nasdaq incurs under the contract. Nasdaq also represents that the proposed fee schedule's Display Charge in part helps the NASD recoup its subsidy of the SDP/server costs and other expenses associated with the development and the maintenance of NWII.

Although the Commission received no comment letters specifically addressing this filing, Nasdaq's proposal to change the fee schedule applicable to NASD members generated three comment letters.⁹ The three letters criticized the proposed fee schedule applicable to NASD members on a number of issues, including: that it disproportionately affects smaller subscribers, that it is unfair to market makers, that it does not adequately place the EWN II network's costs upon the network's beneficiaries, and that Nasdaq has not adequately justified various components of the fee structure and related fees. One letter requested that the Commission review the bidding process and the costs associated with the contract for the new network, to determine a fair cost.¹⁰

⁹ See Letter from Douglas Ralston, President, Sherman Ralston, Inc., to Jonathan Katz, Secretary, Commission, dated October 8, 1998; Letter from David Rich, Associate Compliance Director, Jefferies & Company, Inc., to Jonathan Katz, dated October 9, 1998; Letter from Marge Ferguson, President, Wall Street Telecommunications Association, to Jonathan Katz, dated November 4, 1998 (not specifically identifying a file number, but focusing its comments on Nasdaq Level III service, which is available only to NASD members) ("WSTA letter").

¹⁰ See WSTA letter.

III. Discussion

The Commission finds that the proposed fee schedule for non-NASD members is consistent with the requirements of Section 15A(b)(5) of the Act.¹¹ Section 15A(b)(5) specifies that the rules of a registered securities association shall provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that the NASD operates or controls.¹²

This proposed rule change provides that NASD members and non-NASD members who subscribe to NWII service will pay the same rates, suggesting that the burden of the new fees was allocated fairly. Moreover, by basing the SDP rates on the costs that Nasdaq pays under the contract to implement the EWN II network, but reducing the impact on smaller users by not passing on all of the SDP costs that Nasdaq incurs, the Commission believes that Nasdaq has sought to minimize the adverse impact of those increased fees on non-NASD members, suggesting that the fees are reasonable under the circumstances.

The Commission is not persuaded by the commenters' criticism (in the parallel rule filing regarding the fees Nasdaq charges NASD members) that the costs were not allocated fairly or that the costs are not justified. None of the commenters disputes the issue that Nasdaq's technical modernization efforts are intended to improve Nasdaq's capacity and to enhance services provided to NASD members and non-members alike. Nor do the commenters dispute Nasdaq's contention that the increased Service Charge is intended to offset the costs associated with the technology modernization efforts. Finally, the commenters do not dispute Nasdaq's representation that Nasdaq has chosen not to pass on the entire cost of each SDP slot to members and non-members. Therefore, the Commission finds that the proposal is consistent with the Act.

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 2 merely clarifies that Nasdaq will not attempt to impose the monthly fee changes on non-NASD member subscribers who receive EWN II technology prior to this Order.

¹¹ 15 U.S.C. 78o-3(b)(5).

¹² In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁷ Securities Exchange Act Release No. 40434 (September 11, 1998), 63 FR 49937 (September 18, 1998).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether it 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 ????.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-NASD-98-63, including Amendment No. 2, is approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-32096 Filed 12-1-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40707; File No. SR-PHLX-98-04]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending Rule 783, Report of Financial Arrangements and Floor Procedure Advice F-11, Splitting Orders

November 24, 1998.

I. Introduction

On April 27, 1998, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to

Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder a proposed rule change to amend its financial arrangements rule, Rule 783, and Options Floor Procedure Advice F-11³ regarding the Splitting of Orders. On October 2, 1998, the PHLX submitted Amendment No. 1 to the proposed rule change.⁴ On October 20, 1998, the proposal, as amended, was published for comment in the **Federal Register**.⁵ The Commission received no comments on the proposal. This order approves the proposal.

II. Description of the Proposal

The Exchange proposes to amend its financial arrangements rule Rule 783, to require that members, member organizations, foreign currency options participants, participant organizations and general partners or voting stockholders thereof report to the Exchange financial arrangements for amounts greater than \$5,000. Currently, PHLX Rule 783 requires that members and member organizations report to the Exchange the obtaining and making of a loan over \$2500, including loans to non-members. The proposed definition of financial arrangements includes any consideration over \$5000 that constitutes a loan, gift, salary or bonus; the direct financing of a member or participant organization (except clearing arrangements)⁶, any direct equity investment or profit sharing arrangement; and the guarantee of a trading account (except a clearing arrangement). Currently, paragraph (b) of PHLX Rule 783 provides exceptions

for certain member-to-member loans. Proposed exceptions to the rule are outlined in proposed paragraph (c) of PHLX Rule 783. The amended rule would not apply to stock loan arrangements⁷ or transactions between members affiliated with the same member organization or participants affiliated with the same participant organization or transactions in publicly traded securities of a member organization. All parties involved in the financial arrangement are required to notify the Exchange of eligible financial arrangements without ten (10) business days of the effective date of such arrangements. In the event of termination of the financial arrangement, the parties involved must similarly notify the Exchange of the termination.

In addition, the Exchange proposes to amend Options Floor Procedure Advice F-11 regarding the Splitting of Orders by adding that dually and financially affiliated Registered Option Traders ("ROTs") will be treated as one interest for the purpose of splitting an order in the trading crowd. Currently, Advice F-11 requires ROTs of the same firm when bidding or offering at the same price and for the same option to be treated as one interest for the purpose of splitting an order in the trading crowd. The proposal would extend the Advice to dually and financially affiliated ROTs further ensuring fairness in the order splitting process. Advice F-11 defines "dually affiliated" as those ROTs required to report pursuant to Exchange Rule 793,⁸ and "financially affiliated" as those ROTs required to report pursuant to Exchange Rule 783. The Exchange also proposes to increase the fine schedule for failing to report dual or financial affiliations from \$100.00 to \$500.00 for the first offense; \$250.00 to \$1,000.00 for the second offense; and from \$500.00 to a sanction discretionary with the Business Conduct Committee for the third offense and thereafter. The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The PHLX's minor rule violation enforcement and reporting plan ("minor rule plan"), codified in PHLX Rule 970, contains floor procedure advises with accompanying fine schedules. Rule 19d-1(c)(2) under the Act authorizes national securities exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting; Rule 18d-1(c)(1) under the Act requires prompt filing with the Commission of any final disciplinary action. However, minor rule violation not exceeding \$2,500 are deemed not final, thereby permitting periodic, as opposed to immediate, reporting.

⁴ Letter from Nandita Yagnik, Esquire, PHLX, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, SEC dated Sept. 30, 1998. In Amendment No. 1, the PHLX added a requirement that members, member organizations, participants and participant organizations disclose loans and financial arrangements with non-members.

⁵ Securities Exchange Act Release No. 40541 (Oct. 9, 1998), 63 FR 56056 (Oct. 20, 1998).

⁶ Under the proposal, clearing arrangements are defined as those arrangements in which a company acts as an intermediary in making payments, deliveries or both in connection with transactions in securities, or who provides facilities for comparison of data respecting the terms of settlement of securities.

⁷ Under the proposal, a stock loan arrangement shall mean an agreement for the lending and borrowing of securities and shall include a securities contract or other agreement, including related terms, for the transfer of securities against the transfer of funds, securities, or other collateral, with simultaneous agreement by the transferee to transfer to the transferor against the transfer of funds, securities, or other collateral upon notice, at a date certain, upon demand, the same or substituted securities.

⁸ PHLX Rule 793 requires persons who are general or limited partners, or an officer, director, stockholder or associated person of more than one member or participant organization or who are affiliated in any manner with a non-member, or non-participant organization which is engaged in the securities business, to disclose this affiliation in writing and to have such affiliation approved in writing by the member or participant organization.

¹³ See 17 CFR 200.30-3(a)(12).