

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.