

requirements are consistent with the extension of those securities.

The proposal also permits the extension of good faith margin to certain non-equity securities held in exempt accounts. The Commission notes that the definition of exempt account is limited to certain regulated entities as well as to persons with net worth of at least \$40 million and financial assets of at least \$45 million about whom certain information is publicly available or who make available to the broker-dealer certain current financial information. The Commission believes that these requirements are important to the broker-dealer's evaluation of the creditworthiness of the exempt account borrower and its ability to make an informed decision regarding an extension of good faith margin to the exempt account.

The Commission also notes that the proposal limits the amount of capital charges a broker-dealer may take in lieu of collecting marked to the market losses. Specifically, a broker-dealer may not enter into transactions with exempt accounts that would increase the broker-dealer's capital charges if the broker-dealer's capital charges exceed: (1) 5% of the broker-dealer's tentative net capital on any one account or group of commonly controlled accounts; or (2) 25% of the broker-dealer's tentative net capital on all accounts combined, unless the excess no longer exists on the fifth business day after it was incurred. In addition, the proposal requires broker-dealers to maintain a written risk analysis methodology for assessing the amount of good faith credit extended to exempt accounts and assures that a broker-dealer has procedures for determining, approving, and monitoring extensions of credit to exempt accounts. The Commission believes that these requirements establish important safeguards to minimize potential risks to a broker-dealer.

Accordingly, the Commission finds that the proposed rule change is consistent with section 15A(b)(6) of the Exchange Act,³² which requires, among other things, that the rules of a national securities association be designed to promote just and equitable principles of trade, and to protect investors and the public interest.

The Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment Nos. 1 and 2 strengthen the proposal by providing guidelines for the written risk analysis methodology that

NASD members must develop and maintain, and by requiring a person seeking exempt account status to meet specific registration and reporting requirements, or to provide certain current information concerning the person's ownership, business, operations, and financial condition. In addition, Amendment Nos. 1 and 2 conform the NASD's proposal to an NYSE proposal that the Commission approved previously.³³ Accordingly, the Commission finds that there is good cause, consistent with sections 15A(b)(6) and 19(b) of the Exchange Act, to approve Amendment Nos. 1 and 2 on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2, including whether Amendment Nos. 1 and 2 are consistent with the Exchange 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 filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-00-08 and should be submitted by September 23, 2003.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,³⁴ that the proposed rule change (SR-NASD-00-08), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁵

Margaret H. McFarland,

Deputy Secretary.

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³³ See NYSE Order, *supra* note 27.

³⁴ 15 U.S.C. 78s(b)(2).

³⁵ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48395; File No. SR-NASD-2003-124]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Institute an Hourly Maintenance Fee Associated With the Use of the Nasdaq Workstation II Service by Persons That Are Not NASD Members

August 22, 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 August 6, 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.³ Nasdaq has designated the proposed rule change as constituting a "non-controversial" rule change under section 19(b)(3)(A)(iii) of the Act,⁴ and paragraph (f)(6) of Rule 19b-4 under the Act,⁵ which renders the proposal effective upon receipt of this filing by the Commission. 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 institute an hourly fee for maintenance services supplied for equipment used in connection with the Nasdaq Workstation™ II ("NWII") service.⁶ Nasdaq proposes to implement the proposed rule change thirty days after August 6, 2003.⁷

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On August 12, 2003, Nasdaq filed an amendment to the proposed rule change, which it subsequently withdrew. Telephone conversation between John M. Yetter, Associate General Counsel, Nasdaq, and Frank N. Genco, Division of Market Regulation ("Division"), Commission, on August 19, 2003.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

⁶ This filing applies to persons that are not NASD members. On August 6, 2003, Nasdaq also submitted a proposed rule change to implement an identical charge for NASD members. See File No. SR-NASD-2003-123.

⁷ In this filing, Nasdaq is also moving the text of the footnote to NASD Rule 7010(f) into the text of

³² 15 U.S.C. 78o-3(b)(6).