

meet all the training requirements.<sup>16</sup> Accordingly, the Commission has decided to approve this portion of the Exchange's proposal. The Commission, however, requests the Exchange to carefully monitor the use of exceptional waivers to ensure they are only used in accordance with the standards in the rule.

The Commission also finds that the proposed rule should assist the Exchange in promoting economically efficient execution of securities transactions and fair competition consistent with section 11A of the Act.<sup>17</sup> The proposed rule is designed to support remote access of the BEACON trading system. Each specialist unit identified by the member firm will be assigned an account ("give up") and will be evaluated under the Exchange's Specialist Performance Evaluation Program, which currently measures performance in several separate categories comprising a relative overall performance ranking. This provision, along with other provisions of the proposed rule, should assist the Exchange in efficient and effective market operations.

In summary, the Commission believes that the issuance of ETPs under the requirements outlined above should aid and support the development of the Exchange's remote specialists operation. All of the requirements in the remote specialists rules will remain in place and must be followed. As noted above, the ETPs are not intended to transfer any specialist membership or trading rights but are primarily a surveillance tool. In addition, remote specialists and registered clerks are not permitted to do anything different from Exchange specialist units operating on the floor. Based on the above, the Commission believes the proposal should be approved consistent with the Act.

The Commission finds good cause for approving Amendments No. 2 and 3 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 2 clarifies when BSE may waive the required two week on-floor training for ETP applicants. In addition, Amendment No. 2, clarifies that a registered clerk in a remote specialist operation, who has qualified for an ETP, will be operating under the direct supervision of a registered specialist, just as a registered clerk is supervised on the floor of the Exchange. Amendment No. 3 deletes the provision that permitted BSE to waive the floor examination requirement for BEACON

Remote specialists. Both Amendments clarify and strengthen BSE's proposal. In addition, the Amendments modify the proposal to make it consistent with other BSE rules. Those Amendments did not change the underlying nature of the original proposal that was noticed for comment, and for which no comments were received. Based on the above the Commission believes that good cause exists, consistent with section 6(b)(5)<sup>18</sup> and 19(b)(2)<sup>19</sup> of the Act, to accelerate approval of Amendments No. 2 and 3.

### III Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendments No. 2 and 3, 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 20549-0609. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR-BSE-00-13 and should be submitted by January 25, 2001.

### V. Conclusion

*It is Therefore Ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change SR-BSE-00-13, including Amendments, No. 1, No. 2 and No. 3, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**Jonathan G. Katz,**

*Secretary.*

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<sup>18</sup> 15 U.S.C. 78f(b)(5).

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43768; File No. SR-NASD-00-74]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis Until January 31, 2001 of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to EWN II Fees for Subscribers Who Are Not NASD Members

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 December 14, 2000, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of Terms of Substances of the Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") is herewith filing a proposed rule change to increase the fees associated with the Enterprise Wide Network II ("EWN II") to pass on costs related to increasing its capacity. The proposed rule change is intended to amend the current fee schedule for subscribers who are not members of the NASD. Nasdaq is filing a parallel rule filing to effect the same amendments to the EWN II fee structure to apply to NASD members. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

#### NASD Rule 7010. System Services

(a)-(e) No Change

(f) 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:

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>16</sup> See *supra* note 8.

<sup>17</sup> 15 U.S.C. 78k-1.

Service Charge: [\$1,500]\$1,875/month per service delivery platform ("SDP") from December 1, 2000 through February 28, 2001; \$2,035/month per SDP beginning March 1, 2001.

Display Charge: \$525/month per presentation device ("PD").

Additional Circuit/SDP Charge: [\$2,700] \$3,075/month from December 1, 2000 through February 28, 2001, and \$3,235/month beginning March 1, 2001.\*

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

\*No change to footnotes

\* \* \* \* \*

## 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 Exchange 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 Exchange 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 purpose of this filing is to amend the subscriber fees applicable to subscribers to Nasdaq Workstation II ("NWII") who are not NASD members.

In 1994, Nasdaq rolled out the NWII service, which provided many enhancements to the then-existing Nasdaq Workstation service.<sup>3</sup> As part of the NWII rollout, Nasdaq installed a network, known as the Enterprise Wide Network ("EWN I"), to delivery 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 subscribers gateway from the NWII to the enterprise wide network. Each SDP currently is permitted to support up to eight presentation devices ("PD"), or Nasdaq Workstation IIs, 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.

Due to the ongoing growth in the Nasdaq market and increases in daily share volume after EWN I was installed,<sup>4</sup> Nasdaq became concerned in 1997 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—could only handle one one-half billion shares per day. EWN I was expected to reach maximum circuit capacity during the second quarter of 1999.<sup>5</sup> 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.

According to Nasdaq, EWN II is a significant improvement over EWN I. Among other things, the system is fully scaleable and twice as fast as EWN I. The network was originally built with a 128 kilobit ("kb") data stream feed speed scaleable up to T1 speed (1544 kilobits) levels. Nasdaq began converting subscribers to EWN II in 1998 and completed the conversion in 1999. In conjunction with the conversion, the Nasdaq filed fee increases which became effective in 1998, relating to EWN II.<sup>6</sup>

Since that time, Nasdaq share volume has continued to increase dramatically. The highest average daily share volume for a month in 2000 was just over 2 billion shares, compared to less than 1.5 billion in 1999, and less than 1 billion in 1998. The highest peak share volume

day in 2000 was just under 3 billion shares, compared to under 2 billion in 1999, and just over 1 billion in 1998. The highest actual cumulative share volume for a month occurred twice in 2000 at over 40 billion shares, compared to over 30 billion in 1999, and almost 20 billion in 1998. In March 2000, share volume increased by over 103% compared to March 1999. In April 2000, the peak share volume increased by over 103% compared to April 1999.

To accommodate these increases, Nasdaq expanded the EWN II bandwidth from 128 kb to 192 kb in October 2000. The expanded bandwidth also gives Nasdaq the ability to support new products as they are introduced and future trading applications that will be developed. As a result of expansion to a 192 kb bandwidth, the fees that WorldCom<sup>7</sup> charges Nasdaq have increased by \$375 per month per circuit. Nasdaq proposes on these costs to subscribers for the billing period covered by December 1, 2000 through February 28, 2001.

In order to accommodate additional increases in volume expected to accompany decimalization, Nasdaq will expand EWN II bandwidth to 256kb, and consequently, the fees that WorldCom charges Nasdaq will increase by an additional \$160 per month per circuit. As of December 2000, Nasdaq projects that decimalization in penny increments will significantly increase the number of quote updates, such that on high volume days, a 192 kb bandwidth would be inadequate to support quote traffic. Therefore, Nasdaq proposes to pass on the costs associated with the increase to a 256 kb bandwidth effective March 1, 2001.

Under the proposal, the fee charges to a subscriber for an SDP would increase from \$1,500 per month for each server to \$1,875 per month for December 1, 2000 through February 29, 2001, and then to \$2,035 per month, beginning March 1, 2001. The charge for an additional circuit would increase from \$2,700 per month to \$3,075 per month from December 1, 2000 through February 28, 2001, and then increase again on March 1, 2001 to \$3,235 per month.<sup>8</sup>

<sup>7</sup> MCI and WorldCom merged in September 1998.

<sup>4</sup> When Nasdaq installed EWN I, Nasdaq's average daily share volume (for 1994) was 295 million and projections showed that the average daily share volume for 1997 would be 520 million. In 1997, however, average daily share volume was 650 million.

<sup>5</sup> Similar to any other private network, EWN I was designed to have a maximum circuit capacity (i.e., 2, 100 circuits).

<sup>6</sup> See Securities Exchange Act Rel. Nos. 40434 (Sep. 11, 1998), 63 FR 49937, and 40716 (Dec. 2, 1998), 63 FR 66619.

<sup>8</sup> As noted above, a T1 circuit supports up to six SDPs, and an SDP supports up to eight PDs. A subscriber will be subject to the additional circuit charge when the subscriber has not maximized capacity on its SDPs by placing eight PDs and/or API servers on an SDP; in such case, the NASD/Nasdaq will charge the additional circuit charge for those "underutilized" SDPs (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

<sup>3</sup> NWII provides a windows-based environment and several data management facilities not previously available in Nasdaq's former (pre-1994) workstation service.

Although NASD Rule 7010(f)(2) generally applies to both members and non-member subscribers to NWII service, this filing will only effect a change to the fees charged to subscribers who are not NASD members. Nasdaq is filing a separate but virtually identical rule change to impose the proposed new fees on NASD members.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act,<sup>9</sup> which requires that the rules of the NASD 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. The proposed fees, which will only apply to those who utilize NWII service, simply pass on the costs associated with increasing the capacity of EWN II to keep pace with volume increases. Ensuring adequate capacity is absolutely essential to protecting the integrity of the Nasdaq market, maintaining the confidence of the investing public, and preparing for decimalization.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

Written comments were neither solicited nor received.

## 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 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

eight-to-one ratio). A subscriber also will be subject to the additional circuit charge when the subscriber has not maximized capacity on its T1 circuits by placing six SDPs on a T1 circuit. This pricing structure encourages subscribers to maximize circuit capacity and is aimed at preventing the premature exhaustion of such capacity.

<sup>9</sup> 15 U.S.C. 78o-3(b)(5).

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 will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NASD-00-74 and should be submitted by January 25, 2001.

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

The Commission has reviewed the Nasdaq's proposed rule change and finds, for the reasons set forth below, that the proposal is consistent with the requirements of section 15A of the Act<sup>10</sup> and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with sections 15A(b)(5) of the Act.<sup>11</sup> Section 15A(b)(5) 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 association operates or controls. The above fee increases proposed by Nasdaq pass on the costs associated with increasing the capacity of EWN II to users of the NWII service. The Commission believes that such a fee increase, necessitated by recent system volume increases is a reasonable means by which Nasdaq intends to ensuring adequate capacity of its EWN II system.

Nasdaq has requested that the Commission approve this proposed rule change on an accelerated basis. Nasdaq believes that accelerated approval of this proposal is necessary to ensure that the costs associated with the expansion of its network are allocated uniformly among all NWII subscribers, regardless of whether they are members or non-members. The Commission finds good cause for approving the proposed rule change (SR-NASD-00-74) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-NASD-00-74) is hereby approved on an

<sup>10</sup> 15 U.S.C. 78o-3.

<sup>11</sup> 15 U.S.C. 78o-3(b)(5).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

accelerated basis. The rule change has become effective as of December 1, 2000 and will remain in effect until January 31, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 01-151 Filed 1-3-01; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43769; File No. SR-NASD-00-73]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to EWN II Fees for NASD Members

December 22, 2000.

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 December 13, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated his proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon Commission receipt of this filing. 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

The National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") is herewith filing a proposed rule change to increase the fees associated with the Enterprise Wide Network II ("EWN II") to pass on costs associated with increasing its capacity. Nasdaq has designated this proposal as one establishing or changing a due, fee or

<sup>13</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.