

[Release No. 34-35189; File No. SR-NASD-94-76]

Self-Regulatory Organizations; Notice and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Subscriber Fees for Nasdaq Workstation II and Systems-Related Testing Fees

January 3, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 14, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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 the NASD. The NASD has designated this proposal as one establishing or changing a fee under Section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's 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

Pursuant to Section 19(b)(1) of the Act and Rule 19b-4 thereunder, the following is the full text of a proposed rule change that will revise the fee structure applicable to NASD members receiving the second generation of Nasdaq Workstation™ Service (hereinafter referred to as "NWII") functionality.¹ Additionally, the NASD is proposing to implement fees that member firms would pay to test certain communications interfaces. The proposed fees would take effect on January 1, 1995 and be reflected in Sections A(9) and E(5), respectively, of Part VIII of Schedule D to the NASD By-Laws. The full text of the proposed rule change is set forth below. (New language is underlined and deletions are bracketed.)

Part VIII—Schedule of NASD Charges for Services and Equipment

a. System Services

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9. *Nasdaq Workstation™ Service*

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The following charges shall apply to the receipt of Level 2 or Level 3 Nasdaq Service via equipment and

¹ The computer facilities that support the provisions of NWII are operated by The Nasdaq Stock Market, Inc. ("NSMI"), a wholly owned subsidiary of the NASD.

communications linkages prescribed for the Nasdaq Workstation II service.

*Service Charge—\$100/month per server
Display Charge—\$500/month per
presentation device*

Additional Circuit—\$1,150 per month

* * * * *

E. Other Services

1. No change.
2. No change.
3. No change.

4. *Testing Services.*

Subscribers that conduct tests of their computer-to-computer interface ("CTCI") or digital interface ("DIS/CHIPS") with the central processing facilities of The Nasdaq Stock Market, Inc. ("NSMI") shall pay the following charges:

\$285/hour—For CTCI/DIS/CHIPS testing between 9:00 a.m. and 5:00 p.m. E.T. on business days;

\$333/hour—For testing at all other times on business days, or on weekends and holidays.

The foregoing fees shall not apply to testing occasioned by (i) new or enhanced services and/or software provided by NSMI or (ii) modifications to software and/or services initiated by NSMI in response to a contingency.

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 NASD 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. The NASD 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 rule change is to amend the subscriber fees applicable to NASD member firms that use the NWII to support their trading in The Nasdaq Stock Market ("Nasdaq") and/or the OTC Bulletin ("OTCBB") component of the over-the-counter ("OTC") equities market. The rule change also would establish a new category of fees to be paid by member firms (either directly or through billings from their service bureaus) for testing communication interfaces with central processing facilities that support Nasdaq.

The roll-out of NWII, which began in November, 1994, constitutes a significant milestone in the upgrade of hardware, software, and network facilities that comprise the infrastructure of Nasdaq. The software driving NWII is windows-based and provides several data management features that are not available in the original version of Nasdaq Workstation service (hereinafter referred to as "NWI"). Moreover, a new network—known as the Enterprise Wide Network ("EWN")—has been developed to deliver NWII functionality. The capacity of the EWN is more than five times that of the network developed for NWI (i.e., 56,000 baud versus 9,600 baud). Since the NWII roll-out has now begun, it is appropriate to implement service fees calculated to recover the higher costs of operating and maintaining the NWII functionality and the EWN.²

Under the NWII, each subscriber location will have at least one service delivery platform or server that resides on the EWN. (The server functions as the subscriber's gateway to the EWN.) Each server will be capable of supporting up to eight presentation devices (i.e., Workstations). To recover the operational and maintenance costs associated with providing NWII, the proposed fee structure would establish a charge of \$100/month per server and a charge of \$500/month for each workstation or presentation device linked to that server. Thus, an NWII subscriber with 8 Workstations and 1 server would pay \$4,100/month under the proposed fee structure. Although it is possible to support as many as eight Workstations on a single server, and NWII subscriber might wish to configure its operating environment, for example, with two servers, each supporting 4 Workstations. In this circumstance, the subscriber would pay \$1,150/month for the second circuit at the same location, \$200/month for the two servers, and \$4,000/month for receipt of NWII functionality on 8 Workstations. The proposed fees are premised on the assumption that a subscriber will maximize the capacity of each server before adding a second telecommunications circuit and server. However, if a firm elects to add servers and circuits without maximizing, that firm will bear the additional circuit cost of \$1150/month which constitutes a

² The NWII roll-out will occur in five phases with the final phase scheduled for completion in mid-1996. Each phase consists of installing NWII at all subscriber sites in a defined geographic area. Thus, while the roll-out proceeds, some subscribers will continue to utilize NWI and will pay the existing charges for that service.

pass-through of the actual cost borne by NSMI.

Regarding the proposed testing fees, these have been calculated to recover NSMI's actual costs in accommodating members' requests for testing of specialized communications interfaces with NSMI's central processing facilities. Typically, such testing occurs when new broker-dealer subscribers are added to an existing computer-to-computer interface ("CTCI") maintained by a service bureau or when a broker-dealer (with its own digital interface) has effected a major change in its internal systems/software applications. The scope, purpose, and longevity of the test are determined by the subscriber. NSMI participates in the testing process by providing a test environment that closely approximates the production environment for the service(s) which the subscriber wishes to test (e.g., the Automated Transaction ("ACT") service). Derivation of the testing fees involved a review of NSMI testing logs for 1993; the computation of direct and indirect costs allocable to tests actually performed; and the breakdown of those costs into hourly rates. In sum, the proposed testing fees would pass-through the actual costs incurred by NSMI in accommodating subscribers' testing needs. No testing fee would be assessed in circumstances where major systems/software change instituted by NSMI have prompted the subscriber's test.

The NASD believes that the proposed rule change is consistent with the requirements of Section 15A(b)(5) of the Act. Section 15A(b)(5) specifies that the rules of a national securities association shall provide for the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using any facility or system that the Association operates or controls. It should be noted that the proposed NWII fees will be payable exclusively by NASD member firms that receive Level 2 or Level 3 Nasdaq service via the NWII offering. As described earlier, NWII is being implemented in phases with all current NWI subscribers in a defined area being converted to NWII.³ Thus, beginning January 1, 1995, all NASD members that

³ NWI and NWII both permit the deliver of either Level 2 or Level 3 Nasdaq service. Subscription to Level 3 is limited to NASD members that meet the financial and operational requirements for market making. Subscription to Level 2 Nasdaq service is open to non-members as well as members because it does not provide the functionality needed to enter quotations as a market maker. Extension of the NWII fees to non-member subscribers will be the subject of a separate Rule 19b-4 filing. Meanwhile, any non-members converted to NWII will continue to pay the prevailing rate for NWI functionality.

are converted to NWII will be liable for the new fees; NWI subscribers will continue to pay the NWI service fees until they are converted.

The NASD believes that the proposed NWII fees are reasonable in that they were calculated to recover the projected costs of operating and maintaining the NWII software, hardware, and the EWN. The development costs associated with NWII have been expensed by NSMI and will not be recovered through the proposed NWII fees. Although higher than the existing fees for NWI, the NWII fees are believed reasonable that subscribers will be provided the increased functionality embedded in the new software package, increased network capacity to accommodate future growth in traffic and business volume, and upgraded hardware capable of more rapid processing of message traffic to and from market participants.

Regarding the proposed testing fees, these have been calculated to recover the actual costs incurred by NSMI to accommodate the testing requirements of CTCI and digital interface subscribers. All entities that would be required to pay these testing fees are either NASD members or service bureaus that incur testing charges will pass them on to their broker-dealer customers. Hence, the affected NASD members will ultimately pay the testing charge incurred by their service bureaus.

Based on the foregoing factors, the NASD submits that both categories of proposed fees are reasonable and designed to achieve an equitable allocation of operating costs among NASD members utilizing the affected NSMI services.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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)(ii) of the Act and subparagraph (e) of Rule 19b-4 thereunder, because the proposal

constitutes a change in a "due, fee or other charge" or specific automated services provided to NASD member firms. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., 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 number in the caption above and should be submitted by February 2, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-716 Filed 1-11-95; 8:45 am]

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[Release No. 34-35193; File No. SR-PSE-94-27]

Self-Regulatory Organizations; Pacific Stock Exchange Incorporated; Notice of Filing of Proposed Rule Change Relating to Implementation of a Three-Day Settlement Standard

January 4, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 19, 1994, the Pacific Stock Exchange Incorporated ("PSE") filed with the Securities and Exchange

⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. § 78s(b)(1) (1988).