

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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted by March 30, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35438; File No. SR-NASD-95-01]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Subscriber Fees For Non-NASD Members Receiving the Nasdaq Workstation™ II Functionality

March 2, 1995.

On January 9, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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 a proposed rule change to extend to non-NASD members (e.g., institutional investors) receiving the second generation of Nasdaq Workstation™ functionality ("NWII") the same subscriber fees that members must now pay. The Commission published notice of the proposed rule change in the **Federal Register** on February 2, 1995.² No comments were received in response to the notice. For the reason discussed below, the Commission is approving the proposed rule change.

I. The Terms of Substance of the Proposed Rule Change

On December 14, 1994, the NASD submitted a proposed rule change—File

No. SR-NASD-94-76—to the Commission that established a new fee schedule for NASD member firms receiving the second generation of NWII.³ The fee schedule contained in File No. SR-NASD-94-76 became effective upon receipt by the SEC in accordance with Section 19(b)(3)(A)(ii) of the Act and Rule 19b-4(a) thereunder.⁴ As specified in File No. SR-NASD-94-76, the new subscriber fees for NWII will add to Sections A(9) and E(5) of Part VIII of Schedule D to the NASD By-Laws.

The NASD then filed the instant rule change to extend to non-NASD members (e.g., institutional investors) receiving NWII functionality the same subscriber fees that members must now pay: (a) a service charge of \$100/month per server; (b) a display charge of \$500/month per presentation device; and (c) a charge of \$1,150/month for additional circuits. This rule change does not, however, entail any further modification to the fee schedule language for NWII that was set forth in File No. SR-NASD-94-76.

The sole purpose of this rule change is to extend to non-NASD members receiving the NWII, the same fees that now apply to NASD members that subscribe to the NWII. Currently, non-NASD members can access Level 2 Nasdaq Workstation service by subscription to the original version of the Nasdaq Workstation service ("NWI"). The NASD, however, is in the process of replacing NWI with NWII.⁵ As the NWII roll-out proceeds, it will completely replace the existing NWI for all classes of subscribers. The instant rule change will ensure that the same NWII charges are paid by all subscribers, including those that are not members of the NASD.

II. Commission Findings

The Commission believes that the 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 changes among members, issuers, and other persons using any facility or system that the Association operates or

³The computer facilities that support the provision of NWII are operated by the Nasdaq Stock Market, Inc. ("NSMI"), a wholly-owned subsidiary of the NASD.

⁴ See Release No. 34-35189 (January 3, 1995), 60 FR 3014 (January 12, 1995).

⁵The 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.

controls. This rule provides that the newly established fees for members receiving the NWII functionality will also be paid by non-member subscribers receiving the NWII.⁶ This, in turn, effectuates fairness in the recovery of the applicable costs from the entire subscriber base. As described in this notice, NWII is being implemented in phases with all current NWI subscribers in a defined area being converted to NWII. Also non-NASD members that are converted to NWII will be liable for the new fees; NWI subscribers (i.e., members and non-members) will continue to pay the NWI service fees until they are converted. The extension of the new NWII fees schedule to non-members will result in the imposition of uniform fees and an equitable allocation of operating costs among all subscribers receiving the NWII functionality.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change SR-NASD-95-01 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35435 File No. SR-NASD-94-61]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Filing Requirements Under Article III, Section 44 of the NASD Rules of Fair Practice Regarding Modified Guaranteed Annuity Contracts and Modified Guaranteed Life Insurance Contracts

March 2, 1995.

On January 12, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change² that amends

⁶NWI and NWII both permit the delivery 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.

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

²The NASD originally submitted the proposed rule change on November 21, 1994. On December 1, 1994 and January 12, 1995, the NASD filed amendments to its filing.

² 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 35284 (January 27, 1995), 60 FR 6582.