

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43957; File No. SR-NASD-01-11]

Self-Regulatory Organizations; Notice and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to EWN II Fees for Subscribers Who Are Not NASD Members

February 13, 2001.

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 February 8, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its 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 and II 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

Pursuant to section 19(b)(1) of the Act, and Rule 19b-4 thereunder, the National Association of Securities Dealers, Inc. ("NASD"), through its 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") for non-members. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletion 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:
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.

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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 III below. Nasdaq has prepared summaries, set forth below 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 filing is to obtain approval for the fees applicable to subscribers to Nasdaq Workstation II ("NWII") who are not NASD members. On December 14, 2000, Nasdaq submitted SR-NASD-00-74 under Rule 19b-4 to increase the fees for such non-members so that Nasdaq could recover costs related to increasing network capacity. The rationale for the fee increase is set forth below. Nasdaq also submitted rule filings to increase the fees for NASD members.³ Nasdaq requested accelerated approval of SR-NASD-00-74.

On January 4, 2001, the Securities and Exchange Commission published in the **Federal Register** a notice of filing and order granting accelerated approval of SR-NASD-00-74 on a temporary basis until January 31, 2001.⁴ The comment period on the rule filing closed on January 25, 2001, and the Commission received no comments. Nasdaq hereby requests that the Commission issue an

order granting approval of the rule change.

The following information provides the background and rationale for the fee increase that was described in SR-NASD-00-74. In 1994, Nasdaq rolled out the NWII service, which provided many enhancements to the then-existing Nasdaq Workstation service.⁵ As part of the NWII rollout, Nasdaq installed a network, known as the Enterprise Wide Network ("EWN I"), to deliver 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 subscriber's 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,⁶ 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 and one-half billion shares per day. EWN I was expected to reach maximum circuit capacity during the second quarter of 1999.⁷ 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.

⁵ NWII provides a windows-based environment and several data management facilities not previously available in Nasdaq's former (pre-1994) workstation service.

⁶ 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.

⁷ Similar to any other private network, EWN I was designed to have a maximum circuit capacity (i.e., 2,100 circuits).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See SR-NASD-00-73 and SR-NASD-00-79.

⁴ Securities Exchange Act Release No. 43768 (December 22, 2000), 66 FR 824 (January 4, 2001.)

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 SEC approved fee increases in 1998 relating to EWN II.⁸

Since that time, Nasdaq share volume has continued to increase dramatically. The highest average daily share volume for a month in 2000 was 2.25 billion shares, compared to 1.44 billion in 1999, and less than 1 billion in 1998. The highest peak share volume day in 2000 was 2.88 billion shares, compared to 1.78 billion in 1999, and 1.26 billion in 1998. The highest actual cumulative share volume for a month occurred three times 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 expended 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 WorldCom⁹ charges Nasdaq have increased by \$375 per month per circuit. Nasdaq proposes to pass 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 charged to a subscriber for an SDP could increase

from \$1,500 per month for each server to \$1,875 per month for December 2000 through February 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 2000 through February 2001, and then increase again on March 1, 2001 to \$3,235 per month.¹⁰

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 those subscribers who are not NASD members. As noted above, Nasdaq submitted separate rule filings to impose the proposed new fees on NASD members.

1. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act,¹¹ 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.

¹⁰ 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 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.

¹¹ 15 U.S.C. 78o-3(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, 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 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-01-11 and should be submitted by March 15, 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 Act¹² and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with section 15A(b)(5) of the Act.¹³ 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

¹² 15 U.S.C. 78o-3.

¹³ 15 U.S.C. 78o-3(b)(5).

⁸ See Securities Exchange Act Rel. Nos. 40434 (September 11, 1998), 63 FR 49937, and 40716 (December 2, 1998), 63 FR 66619.

⁹ MCI and WorldCom merged in September 1998.

intends to ensure 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 subscriber, regardless of whether they are members or non-members. The Commission finds good cause for approving the proposed rule change (SR-NASD-01-11) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** in that non-members have been on notice since October 2000 that Nasdaq was proposing to pass along the additional costs as described above and no comments were received by the Commission on SR-NASD-00-74.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-NASD-01-11) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-4355 Filed 2-21-01; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9K78]

State of Florida

Citrus County and the contiguous counties of Hernando, Levy, Marion and Sumter in the State of Florida constitute an economic injury disaster loan area as a result of freezing temperatures beginning in December 2000 and continuing. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on November 13, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: February 13, 2001.

John Whitmore,

Acting Administrator.

[FR Doc. 01-4383 Filed 2-21-01; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice 3578]

Language and Cultural Enhancement Program; Request for Grant Proposals

AGENCY: Bureau of Educational and Cultural Affairs; State.

SUMMARY: The Office of Citizen Exchanges, Youth Programs Division of the Bureau of Educational and Cultural Affairs announces an open competition for a Language and Cultural Enhancement Program. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to conduct a four-week homestay-based, English Language and Cultural Enrichment program from mid-July to mid-August, 2001 for 50 students from the New Independent States (NIS) of the former Soviet Union selected for the Freedom Support Act (FSA) Future Leaders Exchange (FLEX) program. Approximately 15 of the participants will be students with physical disabilities who were specially recruited and selected. The remaining 35 students will be from more isolated regions of the NIS, where there is less opportunity for quality English instruction. The purpose of the program is to raise the English capability of these students to the level where they are able to attend regular classes when their academic program starts in the fall. Additionally, this program will ease the acculturation process when students transit to their permanent host families and communities. Only one grant will be awarded. Funds requested for this project may not exceed \$100,000.

Program Information

Objectives: To prepare a select group of students with special needs to attend school in the fall and perform at a level closer to that of those FSA/FLEX students who make up the majority of the program finalists. To provide students with cultural tools and strategies that will foster a successful exchange experience.

Background: Academic year 2001/2002 will be the ninth year of the FSA/FLEX program, which now includes over 8,000 alumni. This component of the NIS Secondary School Initiative was originally authorized under the FREEDOM Support Act of 1992 and is

funded by annual allocations from the Foreign Operations and Department of State appropriations. The goals of the program are to promote mutual understanding and foster a relationship between the people of the NIS and the U.S.; assist the successor generation of the NIS to develop the qualities it will need to lead in the transformation of those countries in the 21st century; and to promote democratic values and civic responsibility by giving NIS youth the opportunity to live in American society for an academic year.

During the program's early years, there was concern that students from the more remote regions of the NIS might be underrepresented because the lack of English competence in those regions could prevent applicants from meeting the rigorous English language requirements of the FLEX recruitment process, including attaining a reasonable score on the Secondary Level English Proficiency (SLEP) examination. To address this concern, a pre-academic year English language enrichment program was developed so that some students from the remote areas could be selected whose SLEP scores were slightly lower than average. In 1996, the FLEX program added a component incorporating students with disabilities, who do have a need for some special language and cultural training before initiating their academic year program. The enhancement program for which proposals are being solicited here is in support of both groups of students.

The essential components of the enhancement program are:

- A four-week course of study in English, approximately 5.5 hours a day, to build on the language skills that the students already have.
- Programming that builds on cultural issues that will have been introduced at the pre-departure orientation for all FSA FLEX students.
- Orientation programming that addresses the special needs of the students with disabilities and their unique adjustment issues.
- Accommodation with volunteer host families for the period of the workshop.
- Preparing the students for the transition to their permanent host families and communities.

Other Components: Two organizations have already been awarded grants to perform the following functions: recruitment and selection of all FLEX students; preparation of cross-cultural materials; pre-departure orientation; international travel from home to host community and return; facilitation of ongoing communication between the natural parents and

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).