

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 NASD. All submissions should refer to File No. SR-NASD-00-80 and should be submitted by February 6, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43813; File No. SR-NASD-00-75]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. to Extend the Effectiveness of the Pilot Injunctive Relief Rule

January 5, 2001.

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 19, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary NASD Dispute Resolution, Inc. ("NASD Dispute Resolution") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change as described in Items I and II below, which Items have been prepared by NASD Dispute Resolution. On January 4, 2001, NASD Dispute Resolution submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> For the reasons discussed below, the Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 and to approve the proposal and Amendment No. 1 on an accelerated basis.

<sup>8</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.

<sup>3</sup> See letter to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, from Laura Leedy Gansler, Counsel, NASD Dispute Resolution, dated January 3, 2001 ("Amendment No. 1").

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

NASD Dispute Resolution is proposing to amend Rule 10335 of the Code of Arbitration ("Code") of the NASD, to extend the pilot injunctive relief rule for one year, pending Commission action on a pending rule filing, SR-NASD-00-02, to amend Rule 19335 and make it a permanent part of the code. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

#### 10335. Injunctions

(i) Effective Date. This Rule shall apply to arbitration claims filed on or after January 3, 1996. Except as otherwise provided in this Rule, the remaining provisions of the Code shall apply to proceedings instituted under this Rule. This rule shall expire on [January 5, 2000] *January 4, 2002*, unless extended by the Association's Board of Governors.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Dispute Resolution 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. NASD Dispute Resolution 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

Rule 10335, the NASD's pilot injunctive relief rule, provides procedures for obtaining interim injunctive relief in controversies involving member firms and associated persons in arbitration. The rule has primarily been used in "raiding cases," or cases involving the transfer of an employee from one firm to another firm. Rule 10335 took effect on January 3, 1996, for a one-year pilot period. The SEC has periodically extended the initial pilot period in order to permit the NASD to assess the effectiveness of the

rule. The pilot rule is currently due to expire on January 5, 2001.<sup>4</sup>

NASD Dispute Resolution believes that it is in the interest of members and associated persons that the effectiveness of the pilot rule remain uninterrupted pending final Commission action on SR-NASD-00-02. Therefore, NASD Dispute Resolution believes that the pilot rule should be extended to January 4, 2002, or such earlier time as permitted by Commission action on the permanent rule filing, which makes clear that, if approved, the amended rule would supersede the pilot rule in its entirety.

##### 2. Statutory Basis

NASD Dispute Resolution believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>5</sup> which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

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

NASD Dispute Resolution does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

No written comments were solicited or received with respect to the proposed rule change.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act.<sup>6</sup> Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth

<sup>4</sup> On January 12, 2000, NASD Regulation, Inc. filed a proposed rule filing, SR-NASD-00-02 to amend rule 10335 and to make it a permanent part of the Code. See Securities Exchange Act Release No. 42606 (April 3, 2000), 65 FR 18405 (April 7, 2000) (File No. NASD-00-02). Simultaneously with this rule filing, the NASD Dispute Resolution has filed a response to Comments and Amendment No. 3 to SR-NASD-00-02.

<sup>5</sup> 15 U.S.C. 78o-6(b)(6).

<sup>6</sup> In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f)

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 provision of the 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 No. SR-NASD-00-75 and should be submitted by February 6, 2001.

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

NASD Dispute Resolution has requested that the Commission find good cause pursuant to Section 19(b)(2)<sup>7</sup> for approving the proposed rule change and Amendment No. 1 prior to the 30th day after publication in the **Federal Register**. The Commission finds that the proposed rule change and Amendment No. 1 are consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A of the Act and the rules and regulations thereunder.<sup>8</sup> Rule 10335 is intended to provide a pilot system within the NASD arbitration forum to process requests for temporary injunctive relief. Rule 10335 is intended principally to facilitate the disposition of employment disputes, and related disputes, concerning members who file for injunctive relief, to prevent registered representatives from transferring their client accounts to their new firms.

The Commission finds good cause for approving the proposed rule change and Amendment No. 1 prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval will permit members to have the benefit of injunctive relief in arbitration pending Commission action on the rule filing proposing to amend Rule 10335 and make it a permanent part of the Code.<sup>9</sup> Amendment No. 1 makes several technical changes to the proposal and adds the statutory basis to the rule filing. The Commission believes, therefore, that granting

accelerated approval of the proposed rule change, as amended, is consistent with Section 15A of the Act.<sup>10</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-NASD-00-75), as amended, is approved on an accelerated basis through January 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. 01-1155 Filed 1-12-01; 8:45 am]

**BILLING CODE 8010-01-M**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43814; File No. SR-NASD-00-79]

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

January 8, 2001.

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 21, 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. 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 is filing this proposed rule to pass on costs associated with increasing the bandwidth of the Enterprise Wide Network II ("EWN II") to NASD members for the period December 1-12, 2000. Nasdaq previously filed under Section 19(b)(3)(A)(ii) a proposed rule change to increase the fees beginning December 13, 2000, which was immediately effective upon filing.<sup>3</sup>

<sup>10</sup> 17 U.S.C. 78o-3.

<sup>11</sup> 15 U.S.C. 78s(b)(2).

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

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

<sup>27</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 43769 (December 22, 2000), 66 FR 826 (January 4, 2001).

Nasdaq also filed a parallel rule filing to effect amendments to the EWN II fee structure to apply to non-NASD members.<sup>4</sup> Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

#### 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	\$1.875/month per service delivery platform ("SDP") from December [13] 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	\$3,075/month from December [13] 1, 2000 through February 28, 2001, and 3,225/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

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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 IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 15 U.S.C. 78o-3.

<sup>9</sup> See *supra* note 4.