

misconduct conviction will be a factor in considering whether to hire a prospective employee, take adverse employment action with respect to a current employee, or deny prospective or current independent contractors or temporary employees access to Nasdaq's facilities.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(2) and (b)(6) of the Act,<sup>14</sup> in that the proposal is designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove the impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. Nasdaq believes that the proposed rule will assist the NASD in carrying out the purposes of the Act.

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

Nasdaq does not believe that the proposed rule change, as amended, would 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*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. By order approve such proposed rule change as amended, or
- B. Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

## IV. 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. 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 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-2002-113 and should be submitted by January 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 02-31591 Filed 12-13-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46977; File No. SR-NASD-2002-160]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Remove Inoperative Rule Language Relating to Fees for the Nasdaq Workstation I Service**

December 9, 2002.

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 November

5, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Nasdaq has prepared. Nasdaq has designated this proposal as one concerned solely with the administration of the self-regulatory organization under section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(3) thereunder,<sup>4</sup> which renders the rule immediately effective upon filing with the Commission. 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 proposes to amend NASD Rules 7010(f) and 7020 to remove inoperative rule language relating to fees for the discontinued Nasdaq Workstation I service. Nasdaq will implement the proposed rule change immediately upon filing.

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

#### **A. Rule 7010. System Services**

(a)-(e) No change.

(f) Nasdaq Workstation™ Service:

(1) [The following charges shall apply to the receipt of Level 2 or Level 3 Nasdaq Service via an authorized personal computer (PC):]

[Service Charge] .....	[\$345/PC/month].
[Advance Communication Charge] .....	[\$135/PC/month for the first unit, \$85/PC/month for each additional unit at the same site].
[Maintenance (offered only on UNISYS and Tandem PCs)]	[\$55/PC/month].
[Second Monitor/keyboard Attached to an Authorized PC]	[\$195/month].

<sup>14</sup> 15 U.S.C. 78o-3(b)(2) and 15 U.S.C. 78o-3(b)(6).

<sup>15</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> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(3).

[(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 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 per month from December 1, 2000 through February 28, 2001, and \$3,235/month beginning March 1, 2001*.
Maintenance .....	\$55/SDP or PD logon/month.

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.

(3) No change.

\* A subscriber shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its SDPs by placing eight PDs and/or API servers on an SDP and obtains an additional SDP(s); in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each "underutilized" SDP(s) (i.e., 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 shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its T1 circuits by placing eighteen SDPs on a T1 circuit; in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each "underutilized" SDP slot on the existing T1 circuit(s). Regardless of the SDP allocation across T1 circuits, a subscriber will not be subject to the Additional Circuit/SDP Charge if the subscriber does not exceed the minimum number of T1 circuits needed to support its SDP, assuming an eighteen-to-one ratio.

(g)-(s) No change.

7020. [Equipment Related Charges] Reserved

[(a)] The charge for using Nasdaq terminal equipment shall be \$120 per month for the first terminal and \$105 per month for each additional terminal where all terminals are located on the same premises.]

[(b)] The charge for using interrogation or display devices which are not supplied by Nasdaq, but which utilize a

Nasdaq supplied modem, shall be \$75 per month for the first comparable device and \$55 per month for each additional comparable device where all devices are located on the same premises.]

[(c)] The charge for using interrogation or display devices and modems which are not supplied by Nasdaq shall be \$50 per month for each such device located on the same premises.]

[(d)] Nasdaq subscribers utilizing UNISYS or Tandem personal computers (PCs) authorized for emulation of the Harris standard terminal may elect to receive maintenance through Nasdaq at the rate of \$55/PC/month.]

\* \* \* \* \*

## 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 had 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.

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

#### 1. Purpose

The purpose of this rule filing is to remove several provisions from Nasdaq's schedule of charges for service and equipment that reflect charges for the discontinued Nasdaq Workstation I service, which was replaced by the Nasdaq Workstation II service ("NWII") during the mid-1990s.<sup>5</sup> The services to which these charges relate are no longer provided by Nasdaq, so the fees are being removed from the rules. In addition, language relating to a \$55 per

month computer hardware maintenance fee, which remains applicable to NWII, is being relocated, with updated terminology being used to describe the fee.

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,<sup>6</sup> including section 15A(b)(5) of the Act,<sup>7</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 of system which the NASD operates or controls. The proposed rule change removes discontinued Nasdaq Workstation I services from Nasdaq's schedule of charges, thereby clarifying rule language related to fees.

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

Nasdaq believes that the proposed rule change does not impose 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

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

## 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)(iii) of the Act<sup>8</sup> and Rule 19b-4(f)(3) thereunder.<sup>9</sup> At any time within 60 days after the filing of this proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection

<sup>6</sup> 15 U.S.C. 78o-3.

<sup>7</sup> 15 U.S.C. 78o-3(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(3).

<sup>5</sup> See Securities Exchange Act Release No. 35189 (January 3, 1995), 60 FR 3014 (January 12, 1995) (SR-NASD-94-76).

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, 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 in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2002-160 and should be submitted by January 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-31593 Filed 12-13-02; 8:45 am]

BILLING CODE 8010-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46958; File No. SR-NSCC-2002-08]

#### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to New Clearing Fund Valuation of Deposited Securities

December 6, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on October 3, 2002, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. 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 proposed rule change would modify NSCC's clearing fund rules to permit NSCC to apply haircuts to securities pledged by NSCC participants as clearing fund collateral.

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

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.<sup>2</sup>

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

The purpose of the proposed rule change is to modify Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of NSCC's Rules and Procedures to establish haircuts for securities posted by NSCC members as clearing fund collateral.

Under Rule 4, NSCC members are required to make deposits to NSCC's clearing fund.<sup>3</sup> Rule 4 also states that NSCC, at its discretion, may permit part of a member's (with the exception of "mutual fund/insurance services members") clearing fund deposit to be evidenced by an open account indebtedness secured by (a) unmatured bearer bonds that are either direct obligations of or obligations guaranteed as to principal and interest by the United States or its agencies ("qualifying bonds") and/or (b) one or more irrevocable letters of credit under certain guidelines established within NSCC's rules.<sup>4</sup>

<sup>2</sup> The Commission has modified the text of the summaries prepared by NSCC.

<sup>3</sup> The amount of each member's required deposit is determined by NSCC in accordance with one or more formulas.

<sup>4</sup> The Commission recently approved a NSCC proposed rule change (File No. SR-NSCC-2002-05) that increased the minimum amount of cash that must be deposited by members (with the exception of "mutual fund/insurance services members") to satisfy clearing fund requirements and that limited the amount of a deposit that may be collateralized with letters of credit. Securities Exchange Act Release Nos. 46931 (Nov. 27, 2002) and 46389 (Aug. 21, 2002), 67 FR 55053 (Aug 27, 2002).

In its efforts to ensure that it has adequate collateral to cover its members' obligations, NSCC has decided to haircut the value of securities deposited to meet clearing fund requirements. The proposed haircut percentages will range from 2% to 5% and will be based on the type of security deposited, its market risk, and years to maturity.<sup>5</sup> The proposed haircuts are similar to those currently applied by The Depository Trust Company as a part of its risk management controls. These percentages may change from time to time and NSCC will communicate any changes to participants should this occur.

NSCC intends to implement this change no sooner than thirty days after the Commission's approval of this proposed rule filing provided, however, that NSCC would like to make this change effective concurrent with the changes covered by proposed rule change File No. SR-NSCC-2002-05.<sup>6</sup>

NSCC believes that this proposed rule change is consistent with the provisions of the Act and the rules and regulations there under because it will ensure that NSCC is able to better safeguard securities and funds in its possession.

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

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

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

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments it receives.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

<sup>5</sup> NSCC's proposed haircut schedule for U.S. Treasury and agency securities is: Interest bearing with remaining terms to maturity of up to 10 years—2%; Interest bearing with remaining terms to maturity in excess of 10 years—5%; Zero coupon with remaining terms to maturity of up to 5 years—2%; Zero coupon with remaining terms to maturity in excess of 5 years—5%.

<sup>6</sup> *Supra* note 4.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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