

the issuance of Class A stock to all other persons. A further modification reflects that the issuance of the original stock did not occur prior to the previously established deadline of June 30, 1998, and provides that the issuance and sale of Class A stock must be completed by December 31, 1998. Each purchaser of Class A or Class B shares will be obligated to enter into the amended shareholder agreement.

After the Class A stock has been issued, EMCC will amend its articles of incorporation to permit the following actions to be taken upon a two-thirds vote of the shareholders instead of the current requirement of unanimity: (i) any amendment or change to EMCC's certificate of incorporation; (ii) any adoption, amendment or repeal by the shareholders of by-laws of the corporation; (iii) any repurchase of any securities issued by the corporation; and (iv) any issuance of any securities by the corporation.

II. Discussion

Section 17A(b)(3)(A) of the Act⁷ requires that a clearing agency be so organized and have the capacity to facilitate the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the rule change is consistent with EMCC's obligations under Section 17A(b)(3)(A) because the additional capital raised by the issuance of the stock should enable EMCC to increase the efficiency of its clearance and settlement of securities transactions. In addition, the amendments to EMCC's articles of incorporation make more efficient EMCC's ability to take corporate actions that may be necessary to facilitate the clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with Section 17A of the Act⁸ and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-EMCC-98-08) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40706; File No. SR-NASD-98-87]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Filing Fees Under the Corporate Financing Rule

November 24, 1998.

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 November 23, 1998, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. 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

NASD Regulation is proposing to amend Section 6 of Schedule A to the NASD By-laws and NASD Conduct Rule 2710, to delete the provisions mandating that Corporate Financing filing fees be paid in the form of a check or money order. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in *brackets*.

Schedule A to the NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of the Corporation, shall be determined on the following basis.

Section 1-Section 5 No Change

Section 6—Fees for Filing Documents Pursuant to the Corporate Financing Rule

(a) No change.

(b) No change.

[(c) Filing fees shall be paid only in the form of check or money order payable to the National Association of Securities Dealers, Inc.]

[(d)](c) The provisions of Rule 457 adopted under the Securities Act of 1933, as amended, shall govern the computation of

filing fees for all offerings filed pursuant to this Section, including intrastate offerings, to the extent the terms of Rule 457 are not inconsistent with this Section.

Section 7-Section 15 No change

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2710. Corporate Financing Rule—Underwriting Terms and Arrangements

(a) **Definitions** No change

(b) **Filing Requirements.**

(1)-(9) No change.

(1) **Filing Fees.**

(A) No change.

(B) No change.

[(C) Filing fees shall be paid only in the form of a check or money order payable to the National Association of Securities Dealers, Inc.]

[(D)](C) The provisions of SEC Rule 457 adopted under the Securities Act of 1933, as amended, shall govern the computation of filing fees for all offerings filed pursuant to this Rule, including intrastate offerings, to the extent the terms of Rule 457 are not inconsistent with subparagraph (a)[,] or (B) [or (C)] above.

(11)-(13) renumbered (10)-(12). (c) No change.

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 Regulation 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. NASD Regulation 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

NASD Conduct Rule 2710 (the "Corporate Financing Rule") requires that members file most proposed public offerings with the Corporate Financing Department ("Department") of NASD Regulation. The Corporate Financing Department reviews these filings in order to determine whether the underwriting terms and arrangements are fair and reasonable pursuant to standards set forth in Rules 2710, 2720, and 2810 prior to the commencement of the offering. Section 6 of Schedule A to the NASD By-Laws ("Schedule A") and Paragraph (b)(10) of Conduct Rule 2710 include identical provisions that impose a fee on each filing, in the amount of \$500 plus .01% of the value of securities, with a maximum filing fee

⁷ 15 U.S.C. 78q-1(b)(3)(A).

⁸ 15 U.S.C. 78q-1.

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

limit of \$30,500 (the "Corporate Financing filing fee").

Section 6(c) of Schedule A and Paragraph (b)(10)(C) of Conduct Rule 2710 currently require that all Corporate Financing filing fees be paid by check or money order. Such a specific provision was originally adopted in order to prevent the payment of filing fees in cash. Since that time, new methodologies have arisen that facilitate the transfer of money. In order to ensure that NASD Regulation has the necessary flexibility to implement newer forms of payment, NASD Regulation proposes to eliminate Section 6(c) of Schedule A and Paragraph (b)(10)(C) of Conduct Rule 2710. Further a conforming change is made to Paragraph (b)(10)(D) of Conduct Rule 2710 to delete the reference to Paragraph (C) of the same section.

Based on this proposal, members may continue to submit Corporate Financing filing fees in the form of a check or money order to the Corporate Financing Department at the same time that the related documents are filed. Cash payment will still not be accepted in accordance with the standard business practice of the Association. The Association will, however, also implement payment of the Corporate Financing filing fee by wire transfer, and intends to inform filers and members generally of this option. In the case where such a wire transfer is used, the payment of the fee on a timely basis will be considered to "accompany" the filing of the original offering documents or amended offering documents to which it relates, as required by Sections 6(a) and (b) of Schedule A and by Paragraphs(b)(10)(A) and (B) of Conduct Rule 2710.

2. Purpose

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) ³ of the Act, which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fee, and other charges among members. The Association believes that the proposed rule change provides for the equitable allocation of the fees paid by members in connection with the submission of proposed public offerings with the Corporate Financing Department for review.

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

NASD Regulation 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

Written 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)(iii) ⁴ of the Act and subparagraph (e) of Rule 19b-4 ⁵ thereunder in that it is concerned solely with the administration of a self-regulatory organization.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, 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 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 proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., 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 No. SR-NASD-98-87 and should be submitted by December 23, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

⁵ 17 CFR 240.19b-4(e)(1).

⁶ 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40716; File No. SR-NASD-98-63]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Fees for Nasdaq's Workstation II Service for Those Subscribers Who Are Not Members of the NASD

November 25, 1998.

I. Introduction

On August 20, 1998, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, The Nasdaq Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to modify the fees that the NASD charges non-NASD members receiving Nasdaq Workstation II ("NWII") service. Nasdaq amended the filing on September 10, 1998.³

The Commission published notice of the proposed rule change, in the **Federal Register** on October 14, 1998.⁴ The Commission received no comments specifically directed toward this proposal.⁵ Nasdaq filed a second amendment on November 17, 1998.⁶ For the reasons discussed below, the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Robert Aber, Senior Vice President and General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 10, 1998 ("Amendment No. 1").

⁴ Securities Exchange Act Release No. 40521 (October 5, 1998), 63 FR 55167 (October 14, 1998).

⁵ As discussed below, the Commission received comments that were directed toward a parallel proposal, File No. SR-NASD-98-62, which proposed to modify the fees Nasdaq charges NASD members receiving NWII service.

⁶ See Letter from Robert Aber, Nasdaq, to Richard Strasser, Division, Commission, dated November 17, 1998 ("Amendment No. 2"). Amendment No. 2 deleted language, appearing in the **Federal Register** notice, stating that if non-NASD member subscribers received EWN II technology prior to approval of this proposed rule change, then after approval Nasdaq would bill the non-member subscribers in an amount equal to the differential under the EWN I and the EWN II fee structures.

³ 15 U.S.C. 78o-3.