

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 would increase from \$1,500 per month for each server to \$1,875 per month from December 13, 2000 through February 28, 2001, and then to \$2,035 per month, beginning March 1, 2001.<sup>9</sup> The charge for an additional circuit would increase from \$2,700 per month to \$3,075 per month from December 13, 2000 through February 28, 2001, and then increase again on March 1, 2001 to \$3,235 per month.<sup>10</sup>

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 NASD members. Nasdaq is filing a separate but virtually identical rule change to impose the proposed new fees on non-member subscribers.

## 2. Statutory Basis

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

<sup>9</sup> See *Id.*

<sup>10</sup> 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

<sup>11</sup> 15 U.S.C. 78o-3(b)(5).

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

## 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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A)(ii)<sup>12</sup> of the Act and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>13</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such 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 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 the File No. SR-NASD-00-73 and should be submitted by January 25, 2001.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Jonathan G. Katz,  
Secretary.

[FR Doc. 01-152 Filed 1-3-01; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43770; File No. SR-NASD-00-71]

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Assessment of Fees for Automated Confirmation Transaction Service

December 22, 2000.

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 5, 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. Nasdaq has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Association under section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> which renders the proposal 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: (1) Reduce the fee charged for Automated Give-Up ("AGU") transactions<sup>4</sup> processed by the Automated Confirmation and Transaction Services ("ACT"); and (2) establish a separate fee for the correction of transactions already

<sup>14</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)(ii).

<sup>4</sup> The AGU transaction is currently charged the "Comparison" fee of \$0.0144/side. Nasdaq is proposing to carve-out the AGU transaction from this existing "Comparison" category and to reduce to \$0.01 the fee that Nasdaq assesses for these transactions. Telephone conversation between Jeffrey S. Davis, Assistant General Counsel, Nasdaq, and Joseph P. Morra, Special Counsel, SEC, December 21, 2000.

processed by ACT. The text of the proposed rule change is below. Proposed new language is in italics. Proposed deletions are in brackets.

\* \* \* \* \*

Rule 7010. System Services.

(a) through (f) No Change.

(g) Automated Confirmation Transaction Service.

The following charges shall be paid by the participant for use of the Automated Confirmation Transaction Service (ACT):

Transaction Related Charges:

Comparison .....	\$0.0144/side per 100 shares (minimum 400 shares; maximum 7,500 shares).
<i>Automated Give-Up</i> .....	<i>\$0.01/side per 100 shares (minimum 400 shares; maximum 7,500 shares).</i>
Late Report—T+N .....	\$0.288/side.
Browse/query .....	\$0.288/query.
Terminal fee .....	\$57.00/month (ACT only terminals).
CTCI fee .....	\$575.00/month.
Service desk .....	\$57.00/month*.
Trade Reporting .....	\$.029/side (applicable only to reportable transaction not subject to trade comparison through ACT).
Risk Management Charges: .....	\$0.35/side and \$17.50/month per correspondent firm.
Corrective Transaction Charge: .....	<i>\$0.25/Cancel, Error, Inhibit, Kill, or 'No' portion of No/Was transaction, paid by reporting side;</i>
	<i>\$0.25/Break, Decline transaction, paid by each party;</i>

\* \* \* \* \*

## 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.

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

#### 1. Purpose

Nasdaq has set forth below a brief description of the ACT system, followed by discussion of the fees that Nasdaq proposes to change as well as the functionality for which those fees are assessed. The two proposed changes are intended to adhere to the principle that system users should pay fees based upon the functionality they demand and the system usage required by that functionality.

**Background.** ACT is an automated trade reporting and reconciliation service that speeds the post-execution steps of price and volume reporting, comparison, and clearing of pre-negotiated trades completed in Nasdaq, OTC Bulletin Board, and other over-the-counter securities. ACT handles transactions negotiated over the phone or executed through any of Nasdaq's automated trading services. It also manages post-execution procedures for transactions in exchange-listed securities that are traded off-board in

the Third Market. Participation in Act is mandatory for NASD members that are members of a clearing agency registered with the SEC, that have a clearing arrangement with such a member, or that participate in any of Nasdaq's trading services.

Nasdaq market participants—Market Makers and Order Entry firms—have specified obligations for the use of ACT when entering, accepting, or correcting trade details into ACT. Market Makers are obligated to report trades within 90 seconds of execution and to enter trade details of all clearable and internalized transactions through, among other means, the ACT Trade Report function of the Nasdaq Workstation II ("NWII") and Computer to Computer Interface ("CTCI"). Order Entry firms are required to enter a version of the trade within 20 minutes of execution through, among other means, the ACT Trade Report function of the NWII and CTCI or to accept the trade within 20 minutes using the ACT Trade Scan function.

ACT accepts three different entries, each accomplishing a different objective and each using different levels of system resources: Trade Report Only; Clearing Only; and Trade Report and Clearing. The Clearing Only and the Trade Report and Clearing transactions are entered for trade comparison and clearing. This means that when these transactions are entered into ACT they will trigger the system to go through the comparison process to find the contra side's matching entry. If the contra side's entry is found then the two records are matched and will be considered a locked-in trade and can no longer be canceled. If no match is found, the transaction remains open and may be canceled by the entering firm. Whenever any new open transactions are entered into ACT it will search through all existing open transactions to find a

match. The Trade Report Only transactions is designed solely to meet the NASD's trade reporting rule obligation. They do not go through the comparison process in ACT, and they may be canceled by a user.

**Automated Give-Up Fee Reduction ("AGU").** In a "give up" arrangement, a member who reports or accepts a trade in ACT on behalf of another member would identify in the ACT screen give-up box the member on whose behalf the trade was being reported or accepted. Where the executing broker accepts a trade that has been reported by another member, the reporting member would have to report the trade with the executing broker as the contra side and identify the prime brokerage customer as the contra side give-up. The executing broker may then accept the trade as presented. This would avoid a second trade report and ensure that the prime brokerage customer is identified to the NASD.

The ACT Give-Up Automatic Lock-in function allows an introducing broker to enter and lock-in a trade when it is responsible for both sides of the trade. This occurs when two of its "Give-Ups" trade with each other or the introducing broker trades with one of its own Give-Up firms. In the non-automated Give-Up, the introducing broker submits a market-maker entry for one side and either accepts the trade or submits an order-entry firm entry to match the trade. In the automated system, by specifying the Give-Up Lock-In feature, the introducing broker avoids the need to accept the trade or submit the order-entry side. In other words, the lock-in feature will allow the introducing broker to submit just one entry, not two.

Use of the AGU substantially reduces the use of Nasdaq system resources. To process a non-automated give-up transaction, the ACT system must route

between six and twelve input and output messages. The use of the AGU reduces that number by as much as 50 percent. Based upon this reduction in system usage and the increased benefits to market participants, Nasdaq proposes to reduce the "Comparison" fee associated with AGU transactions from \$.0144 per 100 share block to \$.01 per 100 share block for trades of between 400 and 7,500 shares.<sup>5</sup> This represents a substantial savings to market participants and to investors.

**ACT Corrective Transactions Fee.** Market participants are required to correct trade reports that are inaccurate using one of five ACT functions; Cancel, Error, Inhibit, Kill, No/Was, Decline, or Break (collectively, "Corrective Transactions"). Corrective Transactions utilize the comparison functionality of ACT, in that the system is required to identify a particular trade and perform an operation that matches the conduct of the contra parties to the transaction. In fact, these transactions consume system capacity and staff resources disproportionate to those required for standard reporting transactions, and disproportionate to the fee imposed for standard comparison functions. Currently, Nasdaq assesses the standard comparison fee to such transactions.

Along with the rapid growth of Nasdaq daily trading volume, the number of Corrective Transactions is increasing rapidly, unbalancing the proper allocation of system costs to users of system functionality. Accordingly, Nasdaq proposes implementing a \$.025 fee charged to the reporting party for Cancel, Error, Inhibit, Kill, and the "No" portion of "No/Was" trades, as well as a \$.025 fee per side for Break and Decline transactions. The fee is designed to cover a portion of the costs of processing Corrective Transactions that have not previously been charged to market participants. The proposed fee would discourage the unnecessary entry of Corrective Transactions, such as the practice of canceling a number of individual trades and re-entering a single bunched trade to avoid ACT fees. Nasdaq notes that numerous self-regulatory organizations already impose comparable fees for corrective transactions, such as Nasdaq is proposing here.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the

Act,<sup>6</sup> which requires, among other things, that the Association's rules be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Nasdaq believes that the proposed rule change is wholly consistent with the purposes of the Act in that it will provide a cost effective and efficient mechanism to report trades, and therefore facilitates clearance and settlement. Additionally, Nasdaq believes the proposed rule change will enhance the process by which members engage in the comparison and clearing of securities transactions.

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

Nasdaq 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.

### *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 of Commission Action

The proposed rule change was effective upon filing with the Commission pursuant to section 19(b)(3)(A)(ii) of the Act<sup>7</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>8</sup> because it establishes or changes a due, fee, or other charge imposed by the Association. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such 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, 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 number SR-NASD-00-71 and should be submitted by January 25, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 01-153 Filed 1-3-01; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43765; File No. SR-NASD-99-46]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Requiring Registration of Chief Compliance Officers**

December 21, 2000.

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 September 20, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), 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. NASD Regulation filed

<sup>5</sup> The AGU transaction is currently charged the ACT "Comparison" fee because it uses the ACT Comparison functionality. See footnote 4, *supra*.

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

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</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.