

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 the 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-2003-28 and should be submitted by April 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47481; File No. SR-NASD-2003-29]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding the Automated Confirmation Transaction Service ("ACT") Workstation

March 11, 2003.

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 March 3, 2003, 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") the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,³ and rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the

Commission.⁵ 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 introduce a new product known as the ACT Workstation. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

6100. AUTOMATED CONFIRMATION TRANSACTION SERVICE (ACT)

6110. Definitions

(a)-(g) No change.

(h) The terms "Gross Dollar Thresholds" or "Super Caps" in the risk management application of ACT shall mean the daily dollar amounts for purchases and sales that a clearing broker establishes in the ACT system for each correspondent executing broker that may be raised or lowered on an inter-day or intra-day basis. If the value of a correspondent's trades, including those aggregated from transactions in all automated systems owned and operated by the Association or its subsidiaries, equals or exceeds [the] *any* gross dollar threshold[s], the system will alert the clearing broker.

(i)-(k) No change.

(l) The term "Pre-alert" shall mean the alert notifying the correspondent executing broker and the clearing broker that the correspondent executing broker has equaled or exceeded 70% of [the] *any* purchase or sale gross dollar amount[s]. The Association reserves the right to modify the percentage of the pre-alert as necessary and upon prior notification to the ACT Participants.

(m)-(n) No change.

(o) The term "Single Trade Limit" shall mean the *pre-established* dollar amount [established by the Association] for a single trade that enables an ACT clearing firm to review the trade before it is obligated to clear the trade. When a correspondent executing broker negotiates a trade that equals or exceeds the Single Trade Limit, its clearing broker shall have a period of fifteen (15) minutes to review and agree or decline to act as principal for clearing that trade. [Initially, the Single Trade Limit shall be set at \$1,000,000.] The Association reserves the right to modify the [dollar

amount of the Single-Trade Limit or the] time frame for clearing broker review as necessary and upon prior notification to the ACT Participants.

(p) No change.

6120. Participation in ACT

(a) No change.

(b)(1)-(3) No change.

(4) Clearing Broker Obligations

(A) No change.

(B) ACT clearing brokers may utilize the ACT Risk Management functions upon execution of the ACT Participant Risk Management Agreement. Clearing brokers that utilize[d] the ACT Risk Management functions may establish for each correspondent executing broker daily Gross Dollar Thresholds and may raise or lower the thresholds on an inter-day or intra-day basis. ACT clearing brokers will receive a system alert when a correspondent executing broker equals or exceeds [its] *any* gross dollar threshold[s], and will also receive a system pre-alert when a correspondent executing broker equals or exceeds 70% of [the] *any* daily threshold[s].

(C) For trades effected by a correspondent executing broker that equal or exceed [the ACT system's] *a* Single Trade Limit [of \$1,000,000], clearing brokers have fifteen (15) minutes from the time of trade report input to ACT to review the trade and accept or decline to act as principal to the trade. If the clearing broker does not make an affirmative acceptance or declination of the trade report within fifteen (15) minutes, the trade report will be subject to [normal ACT processing and the clearing broker will be obligated to act as principal for the trade] *processing in accordance with the pre-established criteria described in Rule 6150(b)(6)*.

* * * * *

6150. ACT Risk Management Functions

(a) No change.

(b) If a clearing broker voluntarily uses ACT risk management, the ACT system will provide the following risk management capabilities to clearing brokers that have executed an ACT Participant Risk Management Agreement:

(1) Trade File Scan

Clearing brokers will be able to scan the trading activities of their correspondent executing brokers through a Nasdaq terminal.

⁵ Nasdaq provided the Commission with notice of its intent to file the proposed rule change on January 9, 2003. Nasdaq has asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii). The Commission has decided not to waive the 30-day operative delay.

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

(2) Gross Dollar Thresholds (“Super Caps”) and Sizeable Limits

Clearing brokers will be able to establish, on an inter-day or intra-day basis, gross dollar thresholds (also known as “Super Caps”) for purchases and sales for their correspondent executing brokers [, and the ACT system will alert the clearing broker and its correspondent if the correspondent’s trading activity equals or exceeds either threshold]. *When any of a correspondent’s gross dollar thresholds are exceeded, notice will be furnished to the clearing broker, and any trade in excess of an applicable “sizeable limit” that is negotiated by the correspondent will be subject to review by the clearing broker until such time as the correspondent’s trading activity no longer exceeds a gross dollar threshold. Specifically, the clearing broker will have 15 minutes from execution to review any single trade negotiated by the correspondent that equals or exceeds the applicable sizeable limit in order to decide to act as principal for the trade or to decline to act as principal. If the clearing broker does not affirmatively accept or decline the “sizeable trade,” at the end of 15 minutes the system will act in accordance with pre-established processing criteria, as described below.*

(A) ACT Workstation Users.

(i) *Clearing brokers that use the ACT Workstation may establish gross dollar thresholds and sizeable limits for each of their correspondent executing brokers. They may establish different gross dollar thresholds and sizeable limits for each type of security (i.e., Nasdaq National Market, Nasdaq SmallCap Market, Consolidated Quotations Service, or OTC Bulletin Board), as well as an aggregate gross dollar threshold and sizeable limit for all types of securities.*

(ii) *Notice will be provided to all ACT Participants when a correspondent’s aggregate gross dollar threshold is exceeded, but will be provided solely to the clearing broker if the gross dollar threshold for a type of security is exceeded.*

(iii) *Clearing brokers that use the ACT Workstation may also establish the default processing criteria that will apply to sizeable trades when a correspondent’s gross dollar threshold has been exceeded; the clearing broker may specify that after 15 minutes, if the clearing broker does not affirmatively accept or decline the trade, such trades should be either automatically declined or automatically subjected to normal ACT processing in which the clearing*

broker will act as principal to clear the trades.

(B) Other ACT Risk Management Users.

(i) *Clearing brokers that do not use the ACT Workstation may establish aggregate gross dollar thresholds for each of their correspondent executing brokers, but may not establish gross dollar thresholds for each type of security (i.e., Nasdaq National Market, Nasdaq SmallCap Market, Consolidated Quotations Service, or OTC Bulletin Board).*

(ii) *Notice will be provided to all ACT Participants when a correspondent’s aggregate gross dollar threshold is exceeded.*

(iii) *The sizeable limit is \$200,000 for all clearing brokers that do not use the ACT Workstation. When a correspondent’s aggregate gross dollar threshold is exceeded, no trade in excess of the sizeable limit will be accepted for ACT processing unless the clearing broker accepts the trade within 15 minutes of execution.*

(3) Gross Dollar Threshold Pre-Alert

[In addition to the gross dollar threshold alert, t]The ACT system will also alert the clearing broker and its correspondent when the correspondent’s trading activity equals or exceeds 70% of [either] any gross dollar threshold established by the clearing broker for that correspondent.

(4) End of Day Recap

Clearing brokers that access ACT through computer interface will be able to receive an end of day recap of all trade detail information of their correspondents.

(5) On-line Review

Clearing brokers that access ACT through computer interface will be able to receive intra-day activity of their correspondents as it is reported.

(6) Single Trade Limit

Clearing brokers will have 15 minutes from trade report input to ACT to review any single trade executed by their correspondent executing brokers that equals or exceeds [\$1,000,000] a pre-established limit in order to decide to act as principal for the trade or to decline to act as principal. If, however, the clearing firm does not affirmatively accept or decline the trade, at the end of 15 minutes the system will act in accordance with pre-established processing criteria, as described below [subject the trade to normal ACT processing and the clearing firm will be obligated to act as principal to clear the trade].

(A) *ACT Workstation Users. Clearing brokers that use the ACT Workstation may establish single trade limits for each of their correspondent executing brokers, and may establish different limits for each type of security (i.e., Nasdaq National Market, Nasdaq SmallCap Market, Consolidated Quotations Service, or OTC Bulletin Board). Such clearing brokers may also establish the default processing criteria that will apply to trades that exceed the single trade limit after 15 minutes if the clearing broker does not affirmatively accept or decline the trade; the clearing broker may specify that such trades should be either automatically declined or automatically subjected to normal ACT processing in which the clearing broker will act as principal to clear the trades.*

(B) *Other ACT Risk Management Users. For clearing brokers that do not use the ACT Workstation, the single trade limit is \$1,000,000. If such a clearing broker does not affirmatively accept or decline a trade that exceeds the single trade limit, at the end of 15 minutes the system will subject the trade to normal ACT processing and the clearing broker will be obligated to act as principal to clear the trade.*

[(g) Super Cap]

[The Super Cap is set at two times the gross dollar thresholds for purchases and sales, but in no event less than \$1,000,000. When a correspondent’s super cap is exceeded, notice will be furnished to ACT participants and no trade in excess of \$200,000 will be accepted for ACT processing unless the clearing broker accepts the trade within 15 minutes of execution.]

* * * * *

7000. CHARGES FOR SERVICES AND EQUIPMENT**7010. System Services**

(a)–(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) |
| Automated Give-Up. | \$0.029/side |
| 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 |
| [Nasdaq] | \$300/month (full |
| WebLink ACT. | functionality) or |
| | \$150/month (up to |
| | an average of |
| | twenty trans- |
| | actions per day |
| | each month)** |
| Trade reporting | \$0.029/side (applica- |
| | ble only to report- |
| | able transaction |
| | not subject to |
| | trade comparison |
| | through ACT)*** |
| Risk Management | \$0.035/side and |
| Charges. | \$17.25/month per |
| | correspondent firm |
| | (maximum |
| | \$10,000/month per |
| | correspondent |
| | firm) |
| Corrective Trans- | \$0.25/Cancel, Error, |
| action Charge. | Inhibit, Kill, or |
| | 'No' portion of No/ |
| | Was transaction, |
| | paid by reporting |
| | side; |
| | \$0.25/Break, Decline |
| | transaction, paid |
| | by each party |
| ACT Workstation | \$525/logon/ |
| | month**** |

* Each ACT query incurs the \$0.288 fee; however, the first accept or decline processed for a transaction is free, to insure that no more than \$0.288 is charged per comparison. Subsequent queries for more data on the same security will also be processed free. Any subsequent query on a different security will incur the \$0.288 query charge.

** For the purposes of this service only, a transaction is defined as an original trade entry, either on trade date or as-of transactions per month.

*** The trade reporting service charge is applicable to those trades input into ACT for reporting purposes only, such as NSCC Qualified Special Representative reports and reports of internalized transactions.

**** A firm that uses ACT risk management through one or more NWII terminals when the ACT Workstation is introduced will be eligible to evaluate the ACT Workstation for a free, three-month trial period, provided that the firm continues to pay charges associated with its NWII terminal(s) during that period.

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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 its proposal and discussed any comments it received regarding the proposal. 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

ACT is an automated trade reporting and reconciliation service that speeds the post-execution steps of price and volume reporting, comparison, and clearing of trades completed in Nasdaq, OTC Bulletin Board, and other over-the-counter securities. ACT handles transactions executed through Nasdaq's automated trading systems, as well as transactions negotiated over the telephone. It also manages post-execution procedures for transactions in exchange-listed securities that are traded in the Nasdaq InterMarket.

An integral part of ACT is the risk management function. The ACT risk management function provides firms that clear for other firms with the capability to establish acceptable levels of credit for their introducing firms. ACT risk management also enables clearing brokers to monitor buy/sell trading activity of their introducing firms, establish trading thresholds, allow or inhibit large trades, add or delete clearing relationships, and access a real-time database of correspondent trading activity.⁶

On or about March 10, 2003, Nasdaq will be introducing the ACT Workstation, a new product that is designed to allow clearing firms to access the ACT risk management function without using an NWII terminal. In conjunction with the launch of the new product, Nasdaq is also making several minor modifications to the ACT risk management function, and offering certain enhancements to ACT risk management that will be available through the ACT Workstation. Following the launch of the ACT Workstation, however, ACT risk management will continue to be available through NWII terminals and WebLink ACT.⁷

Currently, ACT risk management allows users to receive alerts when a correspondent broker's trading activity exceeds user-defined gross dollar thresholds. In addition, when a correspondent broker's trading activity exceeds a "Super Cap" equal to twice its gross dollar threshold, ACT provides notice of this event to all ACT participants and allows the clearing broker to decline trades compared

through ACT that are in excess of \$200,000 (known as "sizeable" trades). Nasdaq is combining the functionality of the gross dollar threshold and the Super Cap, so that the limit on sizeable trades will apply whenever a correspondent broker's trading activity exceeds its gross dollar threshold. In effect, a firm's gross dollar threshold and its Super Cap will be the same dollar amount. Nasdaq has made this change in response to requests from ACT risk management users, who view the restriction of sizeable trades as a more meaningful risk management tool than the alerts associated with gross dollar thresholds in the current system.

Users of the ACT Workstation will be able to establish gross dollar thresholds and sizeable limits for their correspondent firms that vary based on the type of security being traded by the correspondent firm (*i.e.*, Nasdaq National Market, Nasdaq SmallCap, OTC Bulletin Board, or CQS), as well as aggregate gross dollar thresholds and sizeable limits.⁸ For example, a clearing broker might establish a gross dollar limit of \$500,000 and a sizeable limit of \$200,000 for purchases of Nasdaq National Market securities, and lower limits of \$200,000 and \$100,000 for OTC Bulletin Board securities. If the \$200,000 OTCBB limit was exceeded, OTCBB trades in excess of \$100,000 would be subject to review, but trades in Nasdaq National Market securities could continue without review. Nasdaq believes that this enhancement, which has been requested by many ACT risk management users, will provide clearing brokers with greater flexibility in managing their exposure in markets with varying degrees of liquidity and risk. The clearing broker will receive notice when a gross dollar threshold for a particular type of security is exceeded, and all ACT participants will receive notice when an aggregate gross dollar threshold is exceeded.

Currently, ACT risk management imposes a "single trade limit" of \$1,000,000. When a trade in excess of this amount is negotiated by a correspondent broker, its clearing broker has 15 minutes to decide whether to accept or decline the trade. If the clearing broker takes no action, the trade is automatically accepted for normal ACT processing. The ACT Workstation will allow clearing brokers to establish single trade limits that vary based on the type of security (*i.e.*, Nasdaq National

⁶ See NASD Rule 6150.

⁷ "WebLink ACT" is Nasdaq's new name for "Nasdaq ACT," an internet-based version of ACT introduced in 2001. Securities Exchange Act Release No. 43968 (February 15, 2001), 66 FR 11342 (February 23, 2001) (SR-NASD-2001-05).

⁸ As is currently the case, clearing brokers that use ACT risk management through NWII terminals or WebLink ACT will not be able to vary gross dollar thresholds on the basis of the type of security, nor will they be able to establish a sizeable limit other than \$200,000.

Market, Nasdaq SmallCap, OTC Bulletin Board, or CQS), and to specify the "default" processing to occur if the clearing broker does not acknowledge a trade in excess of the single-trade limit within 15 minutes. Thus, the clearing broker may specify that these "blockbuster" sized trades will be automatically declined (rather than automatically accepted) if the clearing broker does not act within 15 minutes.⁹ ACT Workstation users will also be able to specify the default processing for sizeable trades by a firm that has exceeded its gross dollar threshold.

The ACT Workstation will also include improvements in the system's graphical user interface, such as customizable screen layouts, summary screens, and pop-up alerts. Like an NWII terminal, the ACT Workstation will connect to Nasdaq through Nasdaq's application programming interface ("API"). In fact, firms will be able to download the ACT Workstation software directly to the same equipment that currently serves as an NWII terminal. Accordingly, transition to the new product will be easy for firms to achieve.

The price for the ACT Workstation will be \$525 per logon per month. However, for the first three months following the launch of the new product, Nasdaq will offer the ACT Workstation to existing NWII users as a complimentary service. This will allow current users to test the new product without having to eliminate their existing NWII terminals or pay simultaneously for both products.¹⁰ At the end of the three-month period, users will have the option to discontinue use of either the NWII terminal or the ACT Workstation, or to pay for both.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with the provisions of Section 15A of the Act,¹¹ in general, and with Sections 15A(b)(5)¹² and 15A(b)(6)¹³ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other

⁹ For clearing brokers that use ACT risk management through NWII terminals or WebLink ACT, the single trade limit will remain \$1,000,000 for all types of securities, and trades in excess of the single trade limit will continue to be automatically accepted if the clearing broker does not decline them within 15 minutes.

¹⁰ As noted above, the ACT Workstation software can be downloaded to the same equipment that serves as an NWII terminal. Accordingly, a single computer may serve as both an NWII terminal and an ACT Workstation.

¹¹ 15 U.S.C. 78o-3.

¹² 15 U.S.C. 78o-3(5).

¹³ 15 U.S.C. 78o-3(6).

persons using any facility or system which the NASD operates or controls, and promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

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, 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

Because the foregoing proposed rule change does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and
- (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act¹⁴ and rule 19b-4(f)(6) thereunder.¹⁵ 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 Association. All submissions should refer to file number SR-NASD-2003-29 and should be submitted by April 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47482; File No. SR-NASD-2003-34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Bid Price Test in Nasdaq Listing Standards

March 11, 2003.

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 March 7, 2003, 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 Items have been prepared by Nasdaq. Nasdaq has designated this proposed rule change as "non-controversial" pursuant to Rule 19b-4(f)(6) of the Act,³ which renders it effective immediately upon filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).