

clarifies that, for purposes of Rule G-40, the dealer's Primary Contact may be either a Series 53-registered municipal securities principal or a Series 51-registered municipal fund securities limited principal. Thus, dealers who previously listed a Series 24 or 26 principal as their Primary Contact on Form G-40 should amend their form electronically by visiting the MSRB's Web site (<http://www.msrb.org>) and listing either a Series 53 or 51 principal as their new Primary Contact. Of course, no amendment is necessary if this is the same person, *i.e.*, the Series 24 or 26 previously listed has taken and passed the Series 53 or 51 examination.

The proposed rule change also clarifies that a dealer may amend its Form G-40 electronically by logging on to the MSRB's web site. Finally, the amendments require that dealers note whether the form they are submitting is an original or amended Form G-40; this will facilitate the MSRB's processing of such forms.

2. Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(I) of the Exchange Act, which authorizes the MSRB to adopt rules that provide for the operation and administration of the MSRB. The MSRB also believes that the proposed rule change will facilitate effective electronic communications between dealers and the MSRB.

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

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all brokers, dealers and municipal securities dealers.

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: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) was provided to the SEC for its review at least five business days prior to the filing date; and (iv) does not become operative until August 4, 2003, which is more than thirty (30) days after the date

of its filing, the MSRB has submitted this proposed rule change to become effective pursuant to section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6) thereunder.⁸ In particular, the MSRB believes the proposed rule change qualifies as a "non-controversial filing" in that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 submissions, 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 Board's offices. All submissions should refer to File No. SR-MSRB-2003-05 and should be submitted by August 4, 2003.

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. 34-48138; File No. SR-NASD-2003-71]

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

July 8, 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 April 14, 2003 the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). On April 22, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.³ On May 28, 2003, Nasdaq filed Amendment No. 2 to the proposed rule change.⁴ On June 19, 2003, Nasdaq filed Amendment No. 3 to the proposed rule change.⁵ The proposed rule change is 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 Nasdaq under Section 19(b)(3)(A)(ii) of the Act,⁶ and Rule 19b4 thereunder, 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission dated April 21, 2003. In Amendment No. 1, Nasdaq replaced its proposed rule change in its entirety.

⁴ See letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission dated May 27, 2003. In Amendment No. 2, Nasdaq replaced its proposed rule change in its entirety.

⁵ See letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission dated June 18, 2003. In Amendment No. 3, Nasdaq altered its original notice of a proposed rule change to re-designate it as effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act (15 U.S.C. 78s(b)(3)(A)(ii)). See n. 22 *infra*.

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 17 CFR 200.30-3(a)(12).

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

Nasdaq proposes to eliminate certain fees associated with the use of the Automated Confirmation Transaction Service ("ACT").⁷ The new fee schedule will be implemented beginning on July 1, 2003. The text of the proposed rule change is below. Proposed new

language is in *italics*; proposed deletions are in [brackets].⁸
* * * * *

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:
Reporting of transactions executed through SuperMontage (or any other transaction execution system that makes use of SuperMontage's functionality to report transactions) ("SuperMontage Transactions")

Average daily volume of transaction reports for SuperMontage Transactions during the month to which a participant is a party:	Fee per side for transaction reports of SuperMontage Transactions to which such participant is a party:
0 to 9,999	\$0.029
10,000 or more	\$0.00
<i>Other reports</i> [Reporting of all other] for transactions in Nasdaq National Market and SmallCap Market securities not subject to comparison through ACT ["Covered Transactions"]:	\$0.00
[Average daily volume of media transaction reports for Covered Transactions during the month in which a participant is the reporting party]:	[Fee per side for reports of Covered Transactions to which such participant is a party:]
[0 to 10,000]	[\$0.029]
[10,001 to 50,000]	[\$0.029 for a number of reports equal to 10,000 times the number of trading days in the month]
	[\$0.015 for all remaining reports]
[More than 50,000]	[\$0.029 for a number of reports equal to 10,000 times the number of trading days in the month]
	[\$0.015 for a number of reports equal to 40,000 times the number of trading days in the month]
	[\$0.00 for all remaining reports]
Reporting of all other transactions not subject to comparison through ACT.	\$0.029/side
Comparison	\$0.0144/side per 100 shares (minimum 400 shares; maximum 7,500 shares)
Late Report—T+N	\$0.288/side
Browse/query	\$0.288/query[*] (<i>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.</i>)
Terminal fee	\$57.00/month (ACT only terminals)
CTCI fee	\$575.00/month
WebLink ACT	\$300/month (full functionality) or \$150/month (up to an average of twenty transactions per day each month)[**] (<i>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.</i>)
Risk Management Charges	\$0.035/side and \$17.25/month per correspondent firm (maximum \$10,000/month per correspondent firm)
Corrective Transaction Charge	\$0.25/Cancel, Error, Inhibit, Kill, or 'No' position of No/Was transaction, paid by reporting side;
	\$0.25/Break, Decline transaction, paid by each party
ACT Workstation	\$525/logon/month[***] (<i>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 charge associated with its NWII terminal(s) during that period.</i>)

[* 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.]

[*** 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.]

⁷This filing applies to usage of ACT by NASD members. The usage of ACT by non-members is governed by NASD Rule 6120.

⁸The text is marked to show changes from the language of the rule as amended by Securities Exchange Act Release No. 47919 (May 23, 2003), 68

FR 32788 (June 2, 2003) (SR-NASD-2003-86), which was effective immediately upon filing.

(h)–(s) 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, 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 the 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 and internalized transactions. It also manages post-execution procedures for transactions in exchange-listed securities that are traded in the Nasdaq InterMarket.

Nasdaq recently filed proposed rule changes to reduce ACT fees for (i) reports for transactions in Nasdaq National Market and SmallCap Market securities submitted to ACT by a market participant directly or through Nasdaq's Primex system,⁹ and (ii) reports of transactions that are executed through SuperMontage (or any other transaction execution system that uses SuperMontage's functionality to report transactions).¹⁰ According to Nasdaq, however, based on input received from members, Nasdaq has concluded that these price reductions may not be sufficient to allow Nasdaq to compete effectively for the orders of certain members.

Nasdaq states that it faces competition from market centers that are willing to offer market participants free trade

reporting services,¹¹ and that effectively share market data revenue associated with transactions in Nasdaq-listed securities by "mutualizing" revenues with certain members,¹² notwithstanding the Commission's Order of Summary Abrogation (the "Order") regarding market data revenue sharing programs.¹³ Nasdaq asserts that by mutualizing revenues, a competitor with a comparatively small number of market participants can seek to attract the trade reporting activity of large firms, because a substantial percentage of the revenues associated with a new participant's trade reports will end up being shared with that participant. Nasdaq believes that, by contrast, a similar program instituted by Nasdaq would be competitively ineffective and administratively impractical, because Nasdaq's revenues must support a broader range of market and regulatory programs and because revenues would have to be shared across a broader base of market participants. Nasdaq believes that the resulting competitive environment is fundamentally unfair, because Nasdaq can neither share information revenues directly nor engage in mutualization of revenues. Nasdaq states that it can cut its fees to zero, but certain of its competitors can pay for trade reports. Moreover, Nasdaq believes that market centers that seek to use mutualization as a means of enticing trade reports also benefit from regulatory programs and systems funded predominantly by Nasdaq, and therefore profit from an inequitable apportionment of regulatory costs.¹⁴

Accordingly, Nasdaq has sought to compete through wide-ranging price reductions across multiple services.¹⁵

¹¹ See, e.g., Securities Exchange Act Release No. 47331 (February 10, 2003), 68 FR 7635 (February 14, 2003) (SR-NASD-2003-09) (eliminating trade reporting fees associated with the NASD's Alternative Display Facility).

¹² See Securities Exchange Act Release No. 46688 (October 18, 2002), 67 FR 65816 (October 28, 2002) (SR-CSE-2002-14) (describing the Cincinnati Stock Exchange's general revenue sharing program).

¹³ See Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002).

¹⁴ See Securities Exchange Act Release No. 47849 (May 14, 2003), 68 FR 27722 (May 20, 2003).

¹⁵ See SR-NASD-2003-86 (May 22, 2003) and Securities Exchange Act Release No. 47621 (April 2, 2003), 68 FR 17418 (April 9, 2003) (SR-NASD-2003-56) (reporting of SuperMontage trades); Securities Exchange Act Release No. 47661 (April 10, 2003), 68 FR 19045 (April 17, 2003) (SR-NASD-2003-51) (other trade reports for Nasdaq National Market and SmallCap Market securities); Securities Exchange Act Release No. 47648 (April 8, 2003), 68 FR 17972 (April 14, 2003) (SR-NASD-2003-53) and Securities Exchange Act Release No. 47612 (April 1, 2003), 68 FR 17137 (April 8, 2003) (SR-NASD-2003-54) (Nasdaq Testing Facility); Securities Exchange Act Release No. 47637 (April 7, 2003), 68 FR 17849 (April 11, 2003) (SR-NASD-2003-47) and Securities Exchange Act Release No. 47679 (April

Nasdaq states that its goal in designing the ACT price reductions, however, was to ensure that a member's ACT activity continued to have actual costs associated with it. Accordingly, for non-SuperMontage reports, Nasdaq adopted a graduated fee schedule, in which the price paid for "marginal" trade reports decreased from \$0.029 to zero as trade reporting volume increased, but in which each participant would still be assessed a charge for a substantial number of its trade reports each month. Nasdaq asserts that it has also made SuperMontage reports free in some cases, but only if a member's volume of SuperMontage transaction reports is sufficiently high to allow Nasdaq to conclude that the loss of ACT revenue for SuperMontage reports would be at least partially offset by transaction execution revenue, market data revenue, and fees for value-added ACT services, such as trade comparison and browse/query.

As noted above, however, Nasdaq has now concluded that these price reductions may not be adequate to allow Nasdaq to compete effectively. Accordingly, Nasdaq is proposing to completely eliminate the ACT charge for non-SuperMontage reports of transactions in Nasdaq National Market and SmallCap Market securities that are not subject to comparison through ACT. Thus, the current graduated fee schedule—which applies to all reports in Nasdaq National Market and SmallCap Market securities submitted to ACT by a market participant directly or through Nasdaq's Primex system, including reports submitted pursuant to "automated give-up" ("AGU") and Qualified Service Representative ("QSR") arrangements,¹⁶ as well as internalized trades and Primex trades—would be eliminated.¹⁷

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the

15, 2003), 68 FR 19593 (April 21, 2003) (SR-NASD-2003-48 (March 28, 2003) (NWII logons); Securities Exchange Act Release No. 47608 (April 1, 2003), 68 FR 17134 (April 8, 2003) (SR-NASD-2003-43) and Securities Exchange Act Release No. 47607 (April 1, 2003), 68 FR 17136 (April 8, 2003) (SR-NASD-2003-46) (computer-to-computer interface pricing); and Securities Exchange Act Release No. 47300 (January 31, 2003), 68 FR 6234 (February 6, 2003) (SR-NASD-2003-10) (quotation update fees).

¹⁶ AGU and QSR arrangements allow a participant to report trades executed with other brokers with whom they have entered into a contractual arrangement.

¹⁷ In this filing, Nasdaq is also proposing to move the text of the footnotes to NASD Rule 7010(g) into the text of the rule, to improve the rule's presentation in the NASD Manual, and is also making minor modifications to the existing rule text to enhance its clarity.

⁹ See Securities Exchange Act Release No. 47661 (April 10, 2003), 68 FR 19045 (April 17, 2003) (SR-NASD-2003-51).

¹⁰ SR-NASD-2003-86 (May 22, 2003); see Securities Exchange Act Release No. 47621 (April 2, 2003), 68 FR 17418 (April 9, 2003) (SR-NASD-2003-56).

provisions of Section 15A of the Act,¹⁸ in general, and Section 15A(b)(5) of the Act,¹⁹ in particular, in that it provides 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 rule change will result in a significant reduction in the fees paid by all ACT participants.

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 for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act²⁰ and subparagraph (f)(2) of Rule 19b-4 thereunder,²¹ because it establishes or changes a due, fee, or other charge imposed by Nasdaq. At any time within 60 days after 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. For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on June 19, 2003, when Amendment No. 3 was filed.²²

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, as amended, 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 NASD. All submissions should refer to the File No. SR-NASD-2003-71 and should be submitted by August 4, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-17709 Filed 7-11-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48131; File No. SR-NSCC-2003-08]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Rule 4, Section 12, Clearing Fund and Pledges of Deposits

July 3, 2003.

I. Introduction

On May 6, 2003, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-NSCC-2003-08 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on May 21, 2003.² No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

Each NSCC member pays or receives the net debit or net credit balance in its NSCC money settlement account at the end of each day. NSCC's principal risk is the possible failure of one or more members to settle their net debit obligations. To assure that it is able to complete its settlement obligations each

day, NSCC maintains liquidity resources, including a committed line of credit (maximum amount of \$1.9 billion) with a consortium of banks. This committed line of credit is part of a combined syndicated facility with The Depository Trust Company ("DTC").

The line of credit matures annually. As part of the negotiations to extend the facility for the year beginning May 27, 2003, the lenders requested that Section 12 of NSCC's Rule 4, "Clearing Fund," be clarified.³ Section 12 currently provides that for the purpose of securing loans to NSCC, NSCC may pledge and repledge and grant its lenders a security interest in (i) cash deposits in the clearing fund, (ii) all securities, repurchase agreements, or deposits in which such cash is invested, and (iii) qualified bonds pledged by a member or letters of credit issued on a member's behalf for NSCC's benefit to secure the member's open account indebtedness to NSCC. That section also provides that any such loan to NSCC may be on such terms as NSCC, in its discretion, may deem necessary or advisable and may be in amounts greater and extend for time periods longer than the obligations of any member in NSCC. Subject to the terms and conditions of such loan, NSCC remains obligated to its members to return any items of pledged collateral or permit substitutions and withdrawals thereof as provided in its rules.

It was always the intent and understanding of NSCC and its members that by virtue of Rule 4, Section 12, members had authorized NSCC to pledge to its lenders a member's actual deposits.⁴ In order to accommodate NSCC's lenders, NSCC is modifying the language of Rule 4, Section 12, to make clear NSCC's right to pledge its members' actual deposits to one or more lenders for the purposes enumerated in the rule. In addition, NSCC is also adding language to the rule to make clear what is implicit in the current rule that while there remain any outstanding obligations under any such loan, no member may assert a claim against the lender for the return of any collateral pledged by NSCC as security therefore.⁵

³ The lenders made a similar request of DTC which also resulted in the filing of a proposed rule change by DTC. Securities Exchange Act Release No. 47875 (May 15, 2003), 68 FR 27877 (May 21, 2003) [File No. DTC-2003-08].

⁴ Securities Exchange Act Release No. 28784 (January 16, 1991), 56 FR 2575 (January 23, 1991) [File No. SR-NSCC-90-22].

⁵ The new language states, "No Member, Insurance Carrier Member or Fund Member shall have any right, claim or action against any secured Lender (or any collateral agent of such secured Lender) for the return, or otherwise in respect of, any such collateral Pledged by the Corporation to

Continued

¹⁸ 15 U.S.C. 78o-3.

¹⁹ 15 U.S.C. 78o-3(5).

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

²¹ 17 CFR 240.19b-4(f)(2).

²² See n. 5, *supra*.

²³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 47874 (May 15, 2003), 68 FR 27881.