

or otherwise in furtherance of the purposes of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NASD and, in particular, the requirements of section 15A of the Act<sup>13</sup> and the rules and regulations thereunder.

**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 will also be available for inspection and copying at the principal office of NASD. All submissions should refer to SR-NASD-

2003-67 and should be submitted by May 8, 2003.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-47661; File No. SR-NASD-2003-51]**

**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 ("ACT")**

April 10, 2003.

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 March 24, 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 March 27, 2003, Nasdaq amended the proposed rule change.<sup>3</sup> The proposed rule change

is described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Nasdaq proposes to reduce fees for the use of the Automated Confirmation Transaction Service ("ACT").<sup>6</sup> Nasdaq will implement the proposed rule change on April 1, 2003.

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

\* \* \* \* \*

**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:**

<i>Reporting of transactions executed through SuperMontage (or any other transaction execution system that makes use of SuperMontage's functionality to report transactions).</i>	<i>\$0.029/side.</i>
<i>Reporting of all other transactions in Nasdaq National Market and SmallCap Market securities not subject to comparison through ACT ("Covered Transactions")</i>	
<i>Average daily volume of media transaction reports for Covered Transactions during the month in which a participant is the reporting party:</i>	
<i>0 to 10,000 .....</i>	<i>\$0.029.</i>
<i>10,001 to 50,000 .....</i>	<i>\$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.</i>
<i>More than 50,000 .....</i>	<i>\$0.029 for a number of 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.</i>
<i>Reporting of all other transactions not subject to comparison through ACT.</i>	<i>\$0.029/side.</i>
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).

<sup>13</sup> 15 U.S.C. 78o-3

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See March 26, 2003 letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine

England, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, Nasdaq revised the description of the proposed rule to specify the circumstances under which Nasdaq will aggregate trade reports for corporate entities.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> This filing applies to usage of ACT by NASD members. The usage of ACT by non-members is governed by NASD Rule 6120.

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).**
[Trade reporting] .....	[\$0.029/side (applicable only to reportable transaction not subject to trade comparison through ACT)***].
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' portion of No/Was transaction, paid by reporting side; \$0.25/Break, Decline transaction, paid by each party. \$525/logon/month***[*].
ACT Workstation .....	

\* 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 Service 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.

(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, as amended, 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.

As part of an ongoing effort to reduce the costs incurred by market participants to use Nasdaq services, Nasdaq is proposing to introduce volume-based discounts for trade reports submitted to ACT. The discounts reflected in this proposed rule change apply 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 (defined as "Covered Transactions"), but do not apply to reports submitted automatically through Nasdaq's other transaction execution systems.<sup>7</sup> Thus, the discounts offered by this proposed rule change apply to reports submitted pursuant to "automated give-up" ("AGU") and Qualified Service Representative ("QSR") arrangements,<sup>8</sup> as well as internalized trades and Primex trades. However, the discounts do not apply to transactions that are subject to trade comparison through ACT, for which Nasdaq will continue to charge \$0.0144 per side for each 100 shares (subject to a minimum charge of \$0.0576 and a maximum charge of \$1.08).

Under the proposal, the per side fee paid by an ACT participant for its trade reports during a particular month would depend upon the volume of media transaction reports for Covered Transactions in which the ACT participant was identified as the reporting party during that month.<sup>9</sup> If an ACT participant's average daily volume of such media trade reports was 10,000

<sup>7</sup> Nasdaq has submitted a separate proposed rule change relating to the ACT charges for reporting of SuperMontage transactions. See SR-NASD-2003-56, Rel. No. 34-47621 (April 2, 2003), 68 FR 17418 (April 9, 2003).

<sup>8</sup> AGU and QSR arrangements allow a participant to report trades executed with other brokers with whom they have entered into a contractual arrangement.

<sup>9</sup> Volume will be measured with reference to the market participant identifier ("MPID") appearing on trade reports. If a particular corporate entity has multiple MPIDs associated with the Central Registration Depository ("CRD") number under which it conducts business, Nasdaq will aggregate trade reports associated with all of its MPIDs. However, Nasdaq will not aggregate one corporate entity's reports with those associated with MPIDs assigned to subsidiaries or other affiliates with a different CRD number.

or less, its fee for all ACT reports for Covered Transactions during the month would be \$0.029 per report. An ACT participant with an average daily volume of between 10,001 and 50,000 media trade reports in Covered Transactions during the month would pay \$0.029 per report for a number of reports equal to 10,000 times the number of trading days in the month but only \$0.015 per report for each additional report. Finally, an ACT participant with an average daily volume of more than 50,000 media reports would pay \$0.029 per report for a number of reports equal to 10,000 times the number of trading days in the month and \$0.015 for a number of reports equal to 40,000 times the number of trading days in the month, but all additional reports during the month would be free.

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,<sup>10</sup> in general, and section 15A(b)(5) of the Act,<sup>11</sup> 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. Nasdaq believes that the fee reductions reflected in this proposed rule change assure that all participants reporting Covered Transactions through ACT pay a share of the costs associated with operation of the system, but recognize that the marginal costs associated with increases in trade report volume are low. Accordingly, the fee charged for "marginal" reports decreases as a participant's volume increases. Nasdaq believes that this change will make it

<sup>10</sup> 15 U.S.C. 78o-3.

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

more economical for market participants to use ACT for reporting their trading activity.

*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 foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>12</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>13</sup> because it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. 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. For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on March 27, 2003, when Amendment No. 1 was filed.

**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 NASD. All submissions should refer to the File No. SR-NASD-2003-51 and should be submitted by May 8, 2003.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47662; File No. SR-NSCC-2003-01]

**Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to New Rule 59, "Information Services for Investment Products"**

April 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 17, 2003, 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 primarily 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 add new Rule 59, "Information Services for Investment Products," to NSCC's rules authorizing NSCC to provide services for the transmission and receipt of data and information related to investment and financial products.

**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*

NSCC currently provides limited information services capabilities through its Mutual Fund and Insurance Product services. There is significant demand in the financial services industry for NSCC to make additional information services containing a broader range of information available to a broader range of participants. The proposed rule would authorize NSCC to design and offer such information services. The services would benefit the financial services industry by providing a means whereby information could be transferred in an automated and standardized environment using NSCC's connectivity.

Information services for investment products under Rule 59 would not involve money settlement at NSCC or the guarantee of any obligation. Access to Rule 59 information services would be available to a broader range of participants than other NSCC services that entail settlement or counterparty default risk.

Participants eligible to use Rule 59 information services would include any entity that has signed a membership agreement with NSCC in any other capacity or an entity meeting any one of the following criteria which has entered into an agreement as set forth below:

(i) It is a broker or dealer registered under the Act;

(ii) It is a bank or trust company, including a trust company having limited power, which is a member of the Federal Reserve System or is supervised and examined by state or federal authorities having supervision over banks;

(iii) It is a clearing agency registered with the Commission pursuant to Section 19(a) of the Act;

(iv) It is subject to supervision or regulation pursuant to the provisions of state insurance law and either issues insurance contracts or is licensed to sell insurance products;

(v) It is an investment company registered under Section 8 of the Investment Company Act of 1940, as amended;

(vi) It is an organization or entity that acts as a third party administrator on

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

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

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> The Commission has modified parts of these statements.