

insurance coverage of not less than \$25,000 for all insuring agreements required under Interpretation and Policy .01(a). Proposed Interpretation and Policy .01(a)(3) will specify that members maintain required coverage for Fidelity, On Premises, In Transit, Misplacement, and Forgery and Alternation insuring agreements of not less than 120% of its required net capital under Exchange Act Rule 15c3-1⁴ up to \$600,000. Minimum coverage for required net capital in excess of \$600,000 shall be determined by reference to the following table:

| Net capital requirement under SEC rule 15c3-1 | Minimum coverage |
|---|------------------|
| \$600,000-1,000,000 | \$750,000 |
| 1,000,001-2,000,000 | 1,000,000 |
| 2,000,001-3,000,000 | 1,500,000 |
| 3,000,001-4,000,000 | 2,000,000 |
| 4,000,001-5,000,000 | 3,000,000 |
| 6,000,001-12,000,000 | 4,000,000 |
| 12,000,001-and above ... | 5,000,000 |

Proposed Interpretation and Policy .01(a)(4) will require members to maintain fraudulent trading coverage of not less than the greater of \$25,000 or 50% of the coverage required in paragraph (a)(3), up to \$500,000. Proposed Interpretation and Policy .01(a)(5) will require members to maintain securities forgery coverage of not less than the greater of \$25,000 or 25% of the coverage required in paragraph (a)(3), up to \$250,000.

In addition, proposed Interpretation and Policy .01(b)(3) will clarify that members covered under the brokers' blanket bond of an affiliate must deduct from their net capital the amount of the deductible in excess of the maximum permissible amount described in Exchange Act Rule 15c3-1.

Finally, the Exchange is making a number of non-substantive word changes to the rule to make its meaning more clear.

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act⁵ in general and furthers the objectives of Section 6(b)(5)⁶ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and

open market and a national market system.

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

CBOE 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 Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Exchange Act⁷ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁸ Because the foregoing rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; and the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change, it has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

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 Exchange Act.

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 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 Section. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to file number SR-CBOE-2001-23 and should be submitted by July 10, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44411; File No. SR-NASD-2001-36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. To Eliminate the Service Desk Feature of the Automated Confirmation Transaction Service

June 12, 2001.

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 May 16, 2001, 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" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq amended the proposal on May 31, 2001,³ which amendment completely replaced and superseded the original proposal. On

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See May 30, 2001 letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), SEC and attachments ("Amendment No. 1").

⁴ 17 CFR 240.15c3-1.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

June 7, 2001, Nasdaq again amended the proposal.⁴ 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 amend provision (g) of NASD Rule 7010, "System Services," to eliminate the Automated Confirmation Transaction ("ACT") Service Desk, the telephonic medium for trade reporting by member firms that report five or fewer transactions per day through ACT. Additionally, Nasdaq proposes to amend NASD Rules 4632, 4642, 4652, 6420, 6620, and 6920, all of which are entitled "Transaction Reporting," to eliminate references to the ACT Service Desk. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

4632. Transaction Reporting

(a) When and How Transactions are Reported

(1) No Change.

(2) Non-Registered Reporting Members shall, within 90 seconds after execution, transmit through ACT [or the ACT Service Desk (if qualified pursuant to Rule 7010(g)),] or if ACT is unavailable due to system or transmission failure, by telephone to the Market Operations Department, last sale reports of transactions in designated securities executed during normal market hours. Transactions not reported within 90 seconds after execution shall be designated as late and such trade reports must include the time of execution.

* * * * *

4642. Transaction Reporting

(a) When and How Transactions are Reported

(1) No Change.

(2) Non-Registered Reporting Members shall, within 90 seconds after execution, transmit through ACT [or the ACT Service Desk] or if ACT is unavailable due to system or transmission failure, by telephone to the Market Operations Department, last sale reports of transactions in designated securities executed during normal market hours. Transactions not reported

within 90 seconds after execution shall be designated as late and such trade reports must include the time of execution.

* * * * *

4652. Transaction Reporting

(a) When and How Transactions are Reported

(1) No Change.

(2) Non-Registered Reporting Members shall, within 90 seconds after execution, transmit through ACT [or the ACT Service Desk (if qualified pursuant to Rule 7010(g)),] or if ACT is unavailable due to system or transmission failure, by telephone to the Market Operations Department, last sale reports of transactions in designated securities executed during normal market hours. Transactions not reported within 90 seconds after execution shall be designated as late and such trade reports must include the time of execution.

* * * * *

6420. Transaction Reporting

(a) When and How Transactions are Reported

(1) No Change.

(2)(A) Non-Registered Reporting Members shall, within 90 seconds after execution, transmit through ACT [or the ACT Service Desk (if qualified pursuant to Rule 7010(g)),] or if ACT is unavailable due to system or transmission failure by telephone to the Nasdaq Market Operations Department, last sale reports of transactions in eligible securities executed during the trading hours of the Consolidated Tape otherwise than on a national securities exchange.

(B) Non-registered Reporting Members shall, within 90 seconds after execution, transmit through ACT [or the ACT Service Desk (if qualified pursuant to Rule 7010(g)),] or if ACT is unavailable due to system or transmission failure, by telephone to the Nasdaq Market Operations Department, last sale reports of transactions in eligible securities executed in the United States otherwise than on a national securities exchange between the hours of 4:00 p.m. and 6:30 p.m. eastern Time; trades executed and reported after 4:00 p.m. Eastern Time shall be designated as ".T" trade to denote their execution outside normal market hours. Transactions not reported within 90 seconds after execution must include the time of execution on the trade report.

* * * * *

6620. Transaction Reporting

(a) When and How Transactions are Reported

(1) No change.

(2) Non-Market Makers shall, within 90 seconds after execution, transmit through ACT [or the ACT Service Desk (if qualified pursuant to Rule 7010(g)),] or if ACT is unavailable due to system or transmission failure, by telephone to the Nasdaq Market Operations Department, last sale reports of transactions in OTC Equity Securities executed during normal market hours. Transactions not reported within 90 seconds after execution shall be designated as late.

* * * * *

6920. Transaction Reporting

(a) When and How Transactions are Reported

(1) No change.

[(2) Members that do not have access to an ACT terminal and average five or fewer trades per day during the previous calendar quarter may use the ACT service desk for trade reporting. Such members shall be required to provide all information required by paragraph (c) of this Rule to the ACT service desk within the same time frames set forth in paragraph (a)(1) above.]

[(3)] (2) All members shall report to the Market Regulation Department in Rockville, Maryland on Form T, reports of transactions in DPPs that were not transmitted through ACT, for whatever reason, either on the trade date or the next business date. Form T shall be used exclusively as a back-up mode whenever electronic entry of trade data is not feasible due to system malfunctions or other unusual conditions.

[[4]] (3) A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 2110.

* * * * *

Rule 7010. System Services

(a)-(f) No Change.

(g) Confirmation Transaction Service (ACT):

Transaction Related Charges:

| | |
|------------------|---|
| Comparison | \$0.0144/side per 100 shares (minimum 400 shares; maximum 7,500 shares) |
|------------------|---|

⁴ See June 6, 2001 letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, SEC ("Amendment No. 2"). In Amendment No. 2, Nasdaq made technical amendments to the proposal that were inadvertently omitted from Amendment No. 1.

| | |
|--------------------------|---|
| Automated Give-Up | \$0.01/side per 100 shares (minimum 400 shares; maximum 7,500 shares) |
| Late Report—T+N | \$0.288/side |
| Browse/query | \$0.288/query ¹ |
| Terminal fee | \$57.00/month (ACT only terminals) |
| CTCI fee | \$575.00/month |
| Nasdaq ACT | \$300/month (full functionality) or \$150/month (up to an average of twenty transactions per day each month) ² |
| [Service desk | \$57.00/month ³ |
| Trade Reporting | \$0.29/side (applicable only to reportable transaction not subject to trade comparison through ACT) ^{4,3} |
| Risk Management Charges. | \$.035/side and \$17.50/month per correspondent firm |

Footnotes

¹Each 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.

²For the purposes of this service only, a transaction is defined as an original trade entry, either on trade date or as-of transaction per month.

^{4,3}The ACT service desk is available to ACT participants that: (1) do not have access to Nasdaq equipment and that average five or fewer trades per day during the previous calendar quarter; or (2) utilized the Nasdaq Workstation I to report trades as of June 1999, do not have access to Nasdaq equipment, and average 20 or fewer trades per day during the previous calendar quarter.]

^{4,3}The trade reporting service charge is applicable to these trades input into ACT for reporting purposes only, such as NSCC Qualified Special Representative reports and reports of internalized transactions.

(h)–(p) 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to eliminate the ACT Service Desk, and to remove from the NASD rules all references to it.

ACT is the Nasdaq system used by members to report and compare trades for clearance and settlement, and transmit trade reports for regulatory purposes and public dissemination. After members enter trade information into ACT (as required by NASD ACT and trade-reporting rules),⁵ the system sends locked-in trades to clearing. Under current NASD rules, members must report trades to ACT for certain transactions executed in the over-the-counter market, including transactions in Nasdaq National Market securities ("NNM"), Nasdaq SmallCap securities ("SmallCap"), Over-the-Counter Bulletin Board ("OTCBB") securities, Nasdaq convertible debt securities, exchange-listed securities effected in the over-the-counter market, and securities traded exclusively in the over-the-counter market (e.g., Pink Sheet securities).⁶

There generally are five methods to report trades to ACT: (1) Ordering a Nasdaq Workstation II service ("NWII"); (2) using the Nasdaq ACT Service Desk; (3) agreeing to permit the contra party to a trade to report that trade through the NWII trade (commonly known as a "give-up" relationship); (4) utilizing Nasdaq ACT, an internet-based service introduced in February of 2001; and (5) contracting with a third party to report trades on behalf of the firm (commonly referred to as a Qualified Service Representative or "QSR" arrangement). Each mode of trade-report entry accomplishes the same result, but they have different characteristics. In addition, firms have the option of operating as introducing brokers, meaning that all trades are sent to another member firm for execution and trade reporting.

The ACT Service Desk was designed as a cost-effective method of trade reporting for firms that effect very few transactions in Nasdaq securities or other securities traded in the over-the-counter market.⁷ As such, NASD rules

⁵ See NASD Rules 4630, 4640, 4650, 6100, 6400, 6600, and 6700.

⁶ See *Id.*

⁷ The ACT Service Desk is a phone-based service that allows firms to report trades over the phone to Nasdaq Market Operations staff, who in turn input the trades into the ACT system for dissemination to the tape. See generally, Securities Exchange Act Release No. 27908 (Apr. 17, 1990), 55 FR 15313

limit participation in the ACT Service Desk to only those members who do not have access to Nasdaq equipment and who have effected an average of five or fewer trades per day during the previous calendar quarter.⁸ If a firm has reported more than five trades per day during the previous calendar quarter, the firm must either order a NWII to report trades or enter into a give-up arrangement.

Currently, approximately 375 NASD member firms use the ACT Service Desk to report trades to ACT. Of those, approximately 60 firms report an average of at least one trade per day, another 169 report an average of one trade per month, and an additional 146 firms report fewer than one trade per month on average. Each of these firms pays \$57.00 per month for access to the ACT Service Desk, in addition to the fees assessed per transaction for the use of specific ACT services, including comparison, trade reporting, and risk management.

In light of the existing alternatives for reporting trades to ACT, Nasdaq has decided to eliminate the ACT Service Desk and to redirect those resources towards improving the ACT service for the market as a whole. When Nasdaq created the ACT Service Desk in 1990, that service was the primary low-cost mechanism for trade reporting by member firms with a relatively small volume of trades to report. Since that time, new options for trade reporting have arisen or become more prevalent in the market, including the availability of the give-up relationship⁹, the ACT Service Bureau arrangement, and the recent establishment of Nasdaq ACT.¹⁰ The give-up and Service Bureau arrangements are simple to establish and maintain and are available to any firm at low or no cost outside the standard ACT transaction-based fees. In addition, firms may also function as an introducing broker and, thereby,

(Apr. 23, 1990) (approval order for ACT Service Desk).

⁸ See NASD Rule 7010(g), footnote 3.

⁹ 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.

¹⁰ Nasdaq ACT provides the same basic ACT features and functions offered through the NWII service. In the case of Nasdaq ACT, however, clients that use some but not all ACT functionality have the opportunity to reduce their expenses by purchasing a scaled-back version of the service.

completely avoid the obligation of reporting trades through ACT.

Nasdaq considered and rejected the possibility of increasing the monthly fee for the ACT Service Desk to more accurately reflect the true costs of providing this service. Nasdaq created the ACT Service Desk as a low-cost service and has steadfastly resisted raising the price of that service since its inception, in large part due to the perception that few alternatives for the service existed. This perception no longer reflects reality. Moreover, a fee that accurately reflected the cost of providing the ACT Service Desk would not have been significantly lower than the cost associated with Nasdaq ACT. ACT Service Desk users, which typically need only the trade entry and trade query function (and not risk management) can purchase that service for \$150 per month, \$93.00 more than they pay for the ACT Service Desk today. For that additional fee, users can report up to 20 trades per day (as opposed five per day on the ACT Service Desk), and they can do so more efficiently.

While Nasdaq believes that the elimination of the ACT Service Desk will not materially or unduly burden the current users of that service, it recognizes the inconvenience to users that have grown accustomed to this method of trade reporting. To minimize the disruption of its members' operations, Nasdaq will wait 90 days following Commission approval of this rule proposal before eliminating the ACT Service Desk. Nasdaq will also provide ACT Service Desk users with at least two forms of notice of its schedule for eliminating the service, and will provide accompanying information about firms' options for establishing new trade reporting practices. Finally, Nasdaq will, during this 90-day post approval period, offer current ACT Service Desk users the option of transitioning to Nasdaq ACT for \$57.00 per month to enable them to assess whether that service meets their needs. ACT Service Desk users that transition to Nasdaq ACT after that 90-day period will be assessed the regular fees for Nasdaq ACT, as described in NASD Rule 7010(g).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹¹ which requires, among other things, that the Association's rules must 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 not materially reduce the availability of cost effective and efficient mechanisms to report trades, and therefore facilitates clearance and settlement. Additionally, Nasdaq believes the proposed rule change will not materially detract from the process through 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, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Nasdaq staff has discussed the substance of this rule filing with what Nasdaq believes is a representative sample of current ACT Service Desk users that have reported an average of one or more trades per day during the last three months. Most of the members that Nasdaq contacted indicated that the elimination of the ACT Service Desk would not materially detract from the operation of their firms. Only one member firm stated that this proposal would have a material impact, and Nasdaq has committed to assisting that firm, and any others that may experience difficulty in transitioning away from the ACT Service Desk.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. By order approve such proposed rule change, or
- B. Institute proceedings to determine whether the proposed rule change should be disapproved.

Nasdaq has requested accelerated approval of the proposed rule change. While the Commission will not grant accelerated approval at this time, the Commission will consider granting accelerated approval of the proposal at the close of an abbreviated comment period of 15 days from the date of publication of the proposal in the **Federal Register**.

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 Nasdaq. All submissions should refer to file number SR-NASD-2001-36 and should be submitted by July 5, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Membership of a National Parks Overflights Advisory Group

AGENCY: National Park Service, Interior, Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The National Park Service (NPS) and Federal Aviation Administration (FAA) in accordance with the National Parks Air Tour Management Act of 2000, announce the membership of the National Parks

¹¹ 15 U.S.C. 78o-3(b)(6).

¹² 17 CFR 200.30-3(a)(12).