

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 the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 26, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35157; File No. SR-NASD-94-73]

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

December 27, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 8, 1994 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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 NASD is proposing to increase, by 15%, all existing service fees paid by NASD members that participate in the Automated Confirmation Transaction Service ("ACT" or "Service").¹ The revised fees, which will take effect January 1, 1995, will be set forth in Section A(10) of Part VIII of Schedule D to the NASD By-Laws. The full text of the proposed rule change reflecting the 15% increase in ACT fees is set forth below. (New language is underlined and deletions are bracketed).

Part VIII—Schedule for NASD Charges for Services and Equipment

A. System Services

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10. 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	[\$0.0125] \$0.0144/side per 100 shares (minimum 40 shares; maximum 7,500 shares).
Late report—T+1	[\$0.25] \$0.288/side.
Browse/query	[\$0.25] \$.288/query. ¹
Terminal fee	[\$50.00] \$57.00/month (ACT only terminals).
CTCI fee	[\$500.00] \$575.00/month.
Service desk	[\$50.00] \$57.50/month. ²
Trade reporting	[\$.025] \$0.029/month (applicable only to reportable transactions not subject to trade comparison through ACT). ³
Risk Management Charges	[\$.03] \$0.035/side and [\$15] \$17.25/month per correspondent firm.

¹ Each Act query incurs the [\$0.25] \$0.288 fee; however, the first accept or decline processed for a transaction is free, to insure that no more than [\$0.25] \$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 [\$0.25] \$0.288 query charge.

²No change.

³No 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, the NASD 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. The NASD 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

The purpose of this proposed rule change is to effect a 15% across-the-board increase in each of the service fees related to usage of ACT. This increase, which would take effect on January 1, 1995, constitutes the first increase in ACT fees since the Service became operational in the fourth quarter of 1989.² The necessity for this fee change traces to expanded ACT usage as a result of (i) increased trading volumes in The Nasdaq Stock Market ("Nasdaq") and in the segment of the over-the-counter ("OTC") equities market supported by the OTC Bulletin Board

service ("OTCBB") and (ii) the NASD mandate of real-time trade reporting in Nasdaq SmallCap issues and OTC equities. The aforementioned factors have caused ACT processing to consume a much larger share of network capacity than was originally projected in 1989.

In this regard, a positive correlation exists between Act usage and growth in trade volume as well as the number of securities subject to the NASD's trade reporting requirements. Between 1989 and 1993, the total share volume of Nasdaq grew from 33.5 to 66.5 billion shares, an increase of 98.5%. For the first ten months of 1994, the corresponding figure is approximately 62 billion shares. With respect to growth

⁴ 17 CFR 200.30-3(a)(12).

¹ The computer facilities that support the provision of ACT are operated by The Nasdaq Stock Market, Inc. ("NSMI"), a wholly owned subsidiary of the NASD.

² See Securities Exchange Act Release No. 27551 (December 19, 1989); 54 FR 53408 (December 28, 1989).

in the number of Nasdaq-listed securities, there were 4,965 Nasdaq listings at year-end 1989 compared with 5,731 in October, 1994; this represents an increase of 15.5%. Real-trade reporting for OTC equities was initiated in December, 1993 with a total of 3,652 issues in the OTCBB at year-end. By October, 1994, this figure increased to 5,168 issues, which represents an increase of 41.5%.³ Thus, at the present time, NASD members routinely use the Service to report and compare trades in nearly 11,000 securities. The foregoing information was factored into the calculation of the revised ACT fees.

Additionally, the proposal is designed to recoup certain network costs attributable to provisions of ACT through the Enterprise Wide Network ("EWN").⁴ The EWN is the communications component of Nasdaq's system upgrade which will deliver the second generation of Nasdaq Workstation service functionality ("NWII") to market participants. NWII is currently being phased-in. While the NWII phase-in proceeds, ACT functionality must be provided via the EWN as well as the older network. Therefore, a portion of the fee increase will recoup the network costs associated with providing ACT to member firms using the NWII service.⁵

The NASD believe that the proposed rule change is consistent with the requirements of Section 15A(b)(5) of the Act. Section 15A(b)(5) specifies that the rules of a national securities association shall provide for the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using any facility or system that the association operates or controls. In this instance, the increased fees being proposed relate to a package of automation services available only to NASD member firms that qualify as

³ Additionally, ACT processes trade reports and effects trade comparisons on approximately 1,000 OTC equities that are not quoted in the OTCBB. This subset of OTC equities is characterized by moderate trade volume and the regular submission of trade reports by member firms.

⁴ The EWN will increase the capacity of the communications network supporting Nasdaq more than fivefold (9,600 baud to 56,000 baud). The software driving NWII is windows-based and will contain a number of data management features that are not available in the original Nasdaq Workstation service that resides in the 9600 baud network.

⁵ Section (a)(2) of the Rules of Practice and Procedure for the Automated Confirmation Transaction Service defines an ACT participant to be a member firm registered with the NASD in a market making capacity, or a member firm that functions as an order entry firm, a clearing broker-dealer, correspondent executing broker-dealer, or introducing broker-dealer. Because ACT participation is defined in this manner, ACT fees are only assessed against those member firms that actually use the Service.

ACT participants. The proposed fee increase is the first such increase since ACT became operational in 1989 and is necessary to offset the network costs associated with delivering ACT to approximately 1300 member firms.⁶ As noted above, the increased network costs which this proposal is designed to recoup have occurred as a result of the NASD's expanded trade reporting requirements, the growth in trade volume experienced by the Nasdaq and OTCBB market segments in recent years, and the roll-out of the NWII. In light of these factors, the NASD and NSMI submit that the proposed increase in ACT fees is necessary and appropriate to achieve an equitable allocation of reasonable fees among NASD members using the Service.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4 because the proposal constitutes a change in a due, fee, or other charge for a package of automated services provided only to NASD member firms. At any time within 60 days of the filing of such 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

⁶ During the second half of 1995, ACT fees and ACT-related network costs will be reviewed to determine if the 1995 increase was sufficient to recover those costs. That review may reveal that a further increase is necessary.

Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 with also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above (SR-NASD-94-73) and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-35167; File No. SR-NASD-94-75]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Modification of Filing Fees Under Sections 43(e) and 44(e) of the NASD's Code of Arbitration Procedure

December 28, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 13, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under Section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

⁷ 17 CFR 200.30-3(a)(12).