

and fulfilling its self-regulatory responsibilities.

The Commission also finds that the current requirement that the Board consider factors relating to the qualifications of any shareholder (other than a broker or dealer or statutorily disqualified person) before lifting the voting cap also helps to address the Commission's concern that Nasdaq not be controlled or substantially influenced by an entity that may promote acts or practices that would be inimical to the purposes of the Act.

Two other provisions also act as a deterrent to a shareholder's ability to effect a rapid change in control of Nasdaq. The classified Board structure ensures that it will take at least two shareholder meetings, instead of one, for majority control of the board to shift. As discussed previously, the Certificate also provides that Directors may only be removed for cause and by a supermajority vote of the shareholders. These provisions, together with the scaled voting provision, help to ensure that control of Nasdaq will be attained only in a measured manner and consistent with the requirements set forth in the Act.

Finally, the Commission notes that as currently stated, a person or entity could own a substantial portion of Nasdaq and yet be limited in its actual control of Nasdaq by virtue of the scaled voting provisions, the classified Board structure, and the limitations on the removal of Directors in the By-laws and Certificate. While these provisions help ameliorate the Commission's concern about the control of Nasdaq, concerns about the ability of an entity—in particular a broker, dealer or affiliate—to own up to 100 percent of Nasdaq remain. Thus, further action to address the ownership of a substantial portion of Nasdaq by a broker, dealer or affiliate may be warranted if Nasdaq registers as a national securities exchange.

#### *D. Certificate, Article Eleventh ("Constituency Provision")*

By its own terms Article Eleventh applies when Nasdaq achieves "status as a self-regulatory organization," and it therefore will become operative only if the Commission approves Nasdaq's anticipated application to register as a national securities exchange. The Commission notes preliminarily, however, that Article Eleventh balances the need to ensure that Nasdaq fulfill the self-regulatory obligations incumbent upon it if it registers as a national securities exchange without unduly hampering Nasdaq's ability to consummate major corporate

transactions. Therefore, the Commission finds that new Article Eleventh of the Certificate is consistent with Section 15A(b)(6) of the Act and outlines a legitimate and useful set of criteria that should be considered by the Board if it considers major corporate transactions after exchange registration.

#### **IV. Conclusion**

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>24</sup> that the proposed rule change (SR-NASD-00-27) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>25</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-16745 Filed 6-30-00; 8:45 am]

**BILLING CODE 8010-01-M**

### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-42984; File No. SR-NASD-00-35]**

#### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to a Cap on ACT Risk Management Charges**

June 27, 2000.

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 June 12, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned 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 filed the proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> The Commission is publishing this notice to solicit

<sup>24</sup> 15 U.S.C. 78s(b)(2).

<sup>25</sup> 17 CFR 200.30-3(a)(12).

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

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

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

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

<sup>5</sup> Nasdaq provided written notice to the Commission on June 8, 2000, that is intended to file this proposal. The Commission agreed to waive the 5-day pre-filing notice requirement. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

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 filed the proposed rule change to amend NASD Rule 7010, Systems Services, to establish a cap on the Automation Confirmation Transaction Service ("ACT") risk management charge. Nasdaq has designated this proposal as non-controversial, and requests that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act,<sup>6</sup> to allow the proposal to be both effective and operative immediately upon filing with the Commission. The text of the proposed rule is below. Proposed new language is in italics.

\* \* \* \* \*

Rule 7010. Systems Services

(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:  
No change.

Risk Management Charges: \$0.035/side and \$17.25/month per correspondent firm (*maximum \$10,000/month per correspondent firm*)

\* \* \* \* \*

#### **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 pre-negotiated trades completed in Nasdaq, OTC Bulletin

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

Board, and other over-the-counter securities. ACT handles transactions negotiated over the telephone or executed through any of Nasdaq's automated trading services. It also manages post-execution procedures for transactions in exchange-listed securities that are traded off-board in the Third Market. Participation in ACT is mandatory for NASD members that are members of a clearing agency registered with the SEC, that have a clearing arrangement with such a member, or that participate in any of Nasdaq's trading services.

The ACT risk management function allows firms that clear for other firms to establish acceptable levels of credit for their introducing firms. ACT risk management enables clearing firms to monitor buy/sell trading activity of their introducing firms, establish trading thresholds, allow/inhibit large trades, add/delete clearing relationships, and access a real-time database of correspondent trading activity.<sup>7</sup> Clearing firms providing clearing services to correspondent firms are assessed risk management charges of \$0.035 per trade and \$17.50 per month per correspondent firm. Self-clearing firms do not utilize the ACT risk management function and are not assessed risk management charges.

The ACT service for clearing firms and their executing correspondents, including the risk management function, was implemented in October 1990.<sup>8</sup> The ACT risk management service charge was implemented in November 1990.<sup>9</sup> The original ACT risk management charge was calculated to recoup the development costs for ACT programming efforts as well as costs associated with computer and other hardware purchases to meet the capacity requirements to run the risk management system and to reflect the ongoing costs of operating the risk management function of the ACT system. The per trade portion of the charge was calculated based on trading volume in 1990, which was substantially less than it is at the present. For example, in 1990, Nasdaq National Market ("NNM") securities average 47,000 trades per day; in comparison, NNM securities average

1.26 million trades per day in 1999 (with an average of 1.67 million trades per day in the fourth quarter of 1999). Because the ACT risk management charge is based largely on the number of trades cleared, the expansion in trading volume since 1990 has required some firms to pay increasingly large risk management charges that are disproportionate to the value they receive from ACT, particularly firms that clear for correspondents that execute a large number of trades.

Nasdaq believes that it is appropriate to update the pricing model for ACT risk management charges to reflect current business practices and trading patterns and to ensure that the ACT risk management feature continues to be a valuable, cost-effective service for clearing firms. Nasdaq proposes to revise the ACT service charges and establish a cap of \$10,000 on the monthly risk management charge that a clearing firm must pay on behalf of a correspondent firm. Nasdaq will implement the cap retroactive to April 1, 2000.

## 2. Statutory Basis

Nasdaq believes that the proposal is consistent with the provisions of Section 15A(b)(6) of the Act<sup>10</sup> in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a national market system, and, in general, to protect investors and the public interest. Nasdaq also believes the proposed rule change is consistent with Section 15A(b)(5) of the Act<sup>11</sup> 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 Association operates or controls.

### *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

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 Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup> 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.

Nasdaq has requested that the Commission accelerate the operative date. The Commission finds good cause to designate the proposal to become immediately operative upon filing, because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow NASD members to reap the benefits of the cap on ACT risk management charges retroactive to April 1, 2000 immediately, rather than having to wait 30 days before implementing the cap. For these reasons, the Commission finds good cause to waive the 5-day pre-filing requirement, and to designate that the proposal become operative immediately.<sup>14</sup>

## 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 submission 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

<sup>7</sup> See NASD Rule 6150, ACT Risk Management Functions.

<sup>8</sup> See Securities Exchange Act Release No. 28583 (October 26, 1990), 55 FR 46120 (November 1, 1990)(SR-NASD-89-25). ACT was implemented for self-clearing firms in March 1990. See Securities Exchange Act Release No. 27229 (September 8, 1989), 54 FR 38484 (September 18, 1989)(SR-NASD-89-25).

<sup>9</sup> See Securities Exchange Act Release No. 28595 (November 5, 1990), 55 FR 47161 (November 9, 1990)(SR-NASD-90-57).

<sup>10</sup> 15 U.S.C. 78o-3(b)(6).

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

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

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 NASD All submissions should refer to file number SR-NASD-00-35 and should be submitted by July 24, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary*

[FR Doc. 00-16747 Filed 6-30-00; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42982; File No. SR-NSCC-00-08]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Dividend Processing of AT&T Corporation's When-Issued Trades

June 26, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on June 23, 2000, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

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

The purpose of the proposed rule change is facilitate the processing through NSCC's continuous net settlement ("CNS") system of a dividend declared by AT&T Corp. payable on both its regular way and its when-issued securities.

#### 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

The purpose of the proposed rule filing is to facilitate the processing in NSCC's CNS system of a dividend declared by AT&T Corp. to which firms with both regular way and when-issued positions as of a certain date are entitled. NSCC's procedures for the processing of the dividend are set forth in NSCC's Important Notice dated June 22, 2000, which is attached to this Notice and Order as Exhibit A.

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act<sup>3</sup> which requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.

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

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

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

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

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

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the

rules and regulations thereunder the particularly with the requirements of Section 17A(b)(3)(F).<sup>4</sup> Section 17A(b)(3)(A)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. Allowing the dividend which is payable on both when-issued and regular way securities to be processed in the CNS system should help ensure the dividend will be promptly and accurately cleared and settled.

NSCC has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the rule change prior to the thirtieth day after publication because such approval will facilitate the processing in NSCC's CNS system of a dividend declared by AT&T Corp.

#### 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR-NSCC-00-08 and should be submitted by July 24, 2000.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> that the proposed rule change (File No. SR-NSCC-00-08) be and hereby is approved.

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by NSCC.

<sup>3</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>5</sup> 15 U.S.C. 78s(b)(2).