

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

DTC's Reorg Deposits service enables participants to deposit at DTC certificates for securities that are the subject of a reorganization activity after the reorganization and to have DTC collect the entitlements on the participants' behalf. Cash and security entitlements are credited to the participants' accounts upon DTC's receipt of the entitlements. Participants sometimes receive affidavits of loss instead of certificates from their customers for securities that are the subject of a reorganization activity, and the participants must bear the operational burden of presenting the affidavits of loss to the issuer's agent and of collecting the entitlements. Beginning April 15, 2003, the proposed rule change will allow participants to submit through DTC's Reorg Deposits service affidavits of loss relating to the securities eligible for DTC's Reorg Deposits service and to have DTC collect the entitlements on their behalf. The regular Reorg Deposits service fee will be charged for these deposits. In addition, in the prior Reorg Deposits service rule filing, participants could deposit certificates for securities at DTC that were subject of a reorganization activity only up to two years after the reorganization activity. DTC will no longer apply this two year limit after the reorganization activity to any deposits in the Reorg Deposits service including deposits of certificates or submissions of affidavits of loss.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to DTC because it will contribute to efficiencies in the handling of affidavits evidencing ownership of lost securities that are the subject of reorganization activities. The proposed rule change, which enhances DTC's existing reorganization and deposit services, will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible.

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

DTC perceives no adverse impact on competition by reason of the proposed rule change.

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

Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

**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)(iii) of the Act<sup>4</sup> and Rule 19b-4(f)(4)<sup>5</sup> promulgated thereunder because the proposal effects a change in an existing service of DTC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of DTC or persons using the service. At any time within sixty 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.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including the proposed rule changes 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. Comments may also be submitted electronically at the following e-mail address: [rule-comment@sec.gov](mailto:rule-comment@sec.gov). All comment letters should refer to File No. SR-STC-2003-05. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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

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

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

the Commission's Public Reference Section 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-2003-05 and should be submitted by June 23, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47919; File No. SR-NASD-2003-86]

**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 Reporting of SuperMontage Transactions through the Automated Confirmation Transaction Service ("ACT")**

May 23, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on May 22, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as 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 the self-regulatory organization under section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder.<sup>4</sup> 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**

Nasdaq proposes to amend the fee schedule associated with the use of

<sup>6</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)(ii).

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

ACT.<sup>5</sup> Nasdaq will implement the proposed rule change on June 1, 2003. Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deleted language is [bracketed].

**7000. Charges for Services and Equipment**

**7010. System Services**

(a)—(f) No change.

(g) Automated Confirmation Transaction Service

[(1)] 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").	[\$0.029/side (subject to waiver under paragraph (2) below)]
<i>Average daily volume of transaction reports for SuperMontage Transactions during the month to which a participant is a party.</i>	
<i>0 to 9,999</i> .....	<i>\$0.029</i>
<i>10,000 or more</i> .....	<i>\$0.00</i>
Reporting of all other transactions in Nasdaq National Market and SmallCap Market securities not subject to comparison through ACT ("Covered Transactions")	
<i>Average daily volume of media transaction reports for Covered Transactions during the month in which a participant is the reporting party.</i>	
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.*
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).**
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.
ACT Workstation .....	\$525/logon/month.***

\* 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.

[(2)] The \$0.029 fee for reporting of transactions executed through SuperMontage (and other transaction execution systems that make use of SuperMontage's functionality to report transactions) will be waived for an ACT participant during any month in which the participant:

(i) Executed an average daily volume of 10,000 or more transactions through SuperMontage or any other transaction execution system using SuperMontage's

functionality to report transactions; (ii) reported to ACT at least 98% of the internalized transactions in Nasdaq National Market and SmallCap Market securities executed by the participant during the month; and (iii) posted in SuperMontage at least 70% of the bids, offers, and non-marketable limit orders in Nasdaq National Market and SmallCap Market securities communicated by the participant to any market center. Nasdaq may request that

a participant provide data supporting the participant's certification that it is eligible for the foregoing waiver, and will deem a participant that fails to provide such data upon request to be ineligible for the waiver. If a participant has more than one market participant identifier ("MPID") associated with the Central Registration Depository ("CRD") number under which it conducts business, eligibility will be determined by aggregating activity associated with

<sup>5</sup> This filing applies to usage of ACT by NASD members. The usage of ACT by non-members is governed by NASD Rule 6120.

all of its MPIDs (but not activity associated with MPIDs assigned to subsidiaries or other affiliates with a different CRD number).]

[The term "internalized transaction" refers to a transaction in which a customer order received by the participant is executed against another customer order received by the participant, or against the account of the participant as principal, but that is not facilitated or executed using a Nasdaq system or the system of any market center other than the participant. The term "market center" refers to any exchange market maker, OTC market maker, alternative trading system, national securities exchange, or national securities association.]

(h)-(s) No change.

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## 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

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 filed a proposal,<sup>6</sup> effective as of April 1, 2003, to waive the usual \$0.029 per side ACT fee for transactions executed through SuperMontage and

other systems that use SuperMontage's functionality to report trades (collectively, "SuperMontage Transactions") during any month in which a member: (i) Executed an average daily volume of 10,000 or more transactions through SuperMontage; (ii) reported to ACT at least 98% of the internalized transactions in Nasdaq National Market and SmallCap market securities executed by the participant during the month; and (iii) posted in SuperMontage at least 70% of the bids, offers, and non-marketable limit orders in Nasdaq National Market and SmallCap Market securities communicated by the participant to any market center.

Nasdaq is now proposing to simplify the pricing for ACT reports of SuperMontage Transactions by basing the applicable fee on the average daily volume of ACT transaction reports for SuperMontage Transactions in which an ACT participant is identified as either the reporting party or the contra-party during the month.

Effective June 1, 2003, the basic ACT reporting fee of \$0.029 per trade per side will be waived for all SuperMontage Transactions if an ACT participant is party to an average daily volume of 10,000 or more ACT transaction reports for SuperMontage Transactions during the month. Nasdaq represents that the price applicable to reports of SuperMontage Transactions will be directly related to the extent of such reports. Nasdaq represents that it must compete with other market centers that currently offer free trade reporting services, or that effectively share market data revenue in exchange for trade reports.<sup>7</sup> By associating the availability of free trade reporting with a firm's volume of trade reporting, Nasdaq hopes to ensure adequate funding for ACT, either through a member's direct payment of the standard ACT trade reporting fee, or by the member achieving a high volume of trade reporting that translates into other revenue sources. Specifically, when a firm achieves a high volume of trade reporting, Nasdaq represents that it receives the market data revenue associated with the trade reports and a high volume of transaction execution fees, and is also more likely to earn revenues from providing ancillary

<sup>7</sup> 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); 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 market data revenue sharing program for Nasdaq securities).

services to the firm, such as ACT trade comparison and ACT browse/query. Thus, Nasdaq believes that the proposed ACT fee schedule recognizes not only the economies of scale associated with higher volumes of trade reporting activity, but also the economies of scope and increased revenue streams associated with providing a range of related services to the firm.

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,<sup>8</sup> in general and with section 15A(b)(5) of the Act,<sup>9</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. The Nasdaq believes that the proposal bases the fees applicable to ACT reports of SuperMontage Transactions on the number of such reports to which a member is a party, and thereby recognizes the economies of scale and scope associated with higher volumes of such reports.

### 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 and 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 upon filing pursuant to section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>11</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,

<sup>8</sup> 15 U.S.C. 78o-3.

<sup>9</sup> 15 U.S.C. 78o-3(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

<sup>6</sup> Securities Exchange Act Release No. 47621 (April 2, 2003), 68 FR 17418 (April 9, 2003) (SR-NASD-2003-56).

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, 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 No. SR-NASD-2003-86 and should be submitted by June 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47929; File No. SR-NYSE-2003-15]

### Self Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Arbitration

May 27, 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 May 12, 2003 the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission ("Commission") the proposed amendments to its arbitration rules as described in Items I, II and III below, which items have been prepared

by the Exchange. The Exchange filed the proposed rule change 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. 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 consists of amendments to NYSE Rules 609 (Peremptory Challenge), 610 (Disclosures Required of Arbitrators), 619 (General Provisions Governing Subpoenas, Production of Documents, etc.), and the Voluntary Supplemental Procedures for Selecting Arbitrators (Pilot Program). The text of the proposed rule change is below. New language is italicized; deleted language is in brackets.

\* \* \* \* \*

#### Rule 609. [Peremptory] Challenge[ing] Potential Arbitrators

(a) In any arbitration proceeding, each party shall have the right to one peremptory challenge. In arbitrations where there are multiple claimants, respondents and/or third party respondents, the claimants shall have one peremptory challenge, the respondents shall have one peremptory challenge and the third-party respondents shall have one peremptory challenge, unless the Director of Arbitration determines that the interests of justice would be best served by awarding additional peremptory challenges. Unless extended by the Director of Arbitration, a party wishing to exercise a peremptory challenge must do so by notifying the Director of Arbitration in writing within ten (10) business days of notification of the identity of the person(s) named under Rule 619(d), (e) or Rule 608 whichever comes first.

(b) There shall be unlimited challenges for cause. *A challenge for cause to a particular arbitrator will be granted where it is reasonable to infer an absence of impartiality, the presence of bias, or the existence of some interest on the part of the arbitrator in the outcome of the arbitration as it affects one of the parties. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.*

#### Rule 610. Disclosures Required of Arbitrators

- (a) No change.
- (1) Any direct or indirect financial or personal interest in the outcome of the arbitration;
- (2) Any existing or past financial, business, professional, family or social relationships that are likely to affect impartiality or might reasonably create an appearance of partiality or bias. Persons requested to serve as arbitrators [should] *shall* disclose any such relationships which they personally have with any party or its counsel, or with any individual whom they have been told will be a witness. They [should] *shall* also disclose any such relationship involving members of their families or their current employers, partners or business associates.
- (b) Persons who are requested to accept appointment as arbitrators [should] *shall* make a reasonable effort to inform themselves of any interests or relationships described in Paragraph (a) above.
- (c) & (d) No change.

#### Rule 619. General Provision Governing Subpoenas, Production of Documents, etc.

- (a) No changes.
- (b) Document Production and Information Exchange.
- (1) Any party may serve a written request for information or documents ("information request") upon another party twenty (20) business days or more after service of the Statement of Claim by the Director of Arbitration or upon filing of the Answer, whichever is earlier. The requesting party shall serve the information request on all parties [and file a copy with the Director of Arbitration]. The parties shall endeavor to resolve disputes regarding an information request prior to serving any objection to the request. Such efforts shall be set forth in the objection.
- (2) Unless a greater time is allowed by the requesting party, information requests shall be satisfied or objected to within thirty (30) calendar days from the date of service. Any objection to an information request shall be served by the objecting party on all parties [and filed with the Director of Arbitration].
- (3) Any response to objections to an information request shall be served on all parties [and filed with the Director of Arbitration] within ten (10) calendar days of receipt to the objection.
- (4) Upon the written request of a party whose information request is unsatisfied, the matter will be referred by the Director of Arbitration to either a pre-hearing conference under

<sup>12</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).