believes that the proposed structure of fees and credits reflects more accurately the existing market price levels for similar services, and, as such, will result in more equitable allocation among members of the charges associated with CAES and CAES/ITS. Nasdaq expects that the proposed rule change will encourage greater use of CAES and CAES/ITS, contributing to greater competition for executions of orders for New York Stock Exchange, Inc.-(''NYSE'') and American Stock Exchange LLC-(''AMEX'') listed securities.

The proposed rule distinguishes between NYSE and non-NYSE exchange-listed securities, and eliminates transaction charges with respect to executions in NYSE-listed securities. Nasdaq expects that the elimination of such charges will encourage members to make greater use of CAES and the CAES/ITS linkage to trade NYSE securities, thereby increasing competition in this market segment, and benefiting members as well as the investing public.[6] As there will be no transaction charges for NYSE-listed securities, Nasdaq represents that there will also not be a liquidity provider credit with respect to such securities.

With respect to transaction charges for non-NYSE securities, the proposal sets a slightly lower per-share rate for any firm that, in a given calendar month, uses CAES and the CAES/ITS linkage to execute an average of at least 500,000 shares per trading day. To calculate the average, executions in both NYSE and non-NYSE securities will be counted. Such lower rate—25 cents per 100 shares—will apply only to non-NYSE securities in those months when this higher average is attained. In months when the average number of shares executed per trading day is below 500,000, the rate for non-NYSE securities will be 27 cents per 100 shares. The proposed rule retains the existing $75 per execution cap on the transaction charge. Finally, the proposal will set the liquidity provider credit for all firms at 20 cents per 100 shares for non-NYSE securities (regardless of total share volume levels), subject to a $37.50 cap per execution.

Nasdaq believes that all of these changes are designed to make CAES and CAES/ITS more economically feasible for its members and to encourage greater use of these systems.

[6] Nasdaq notes that, according to the fee schedule posted on the Archipelago Exchange website, www.arcaex.com, Archipelago Exchange also distinguishes between NYSE and non-NYSE securities and does not charge for transactions in NYSE securities.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[7] in general, and section 15A(b)(5) of the Act,[8] 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 Association operates or controls. Nasdaq believes that by adopting a pricing structure that is responsive to market demands, the proposed rule supports efficient use of existing systems by members and ensures that the charges associated with such use are allocated equitably.

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 proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [9] and subparagraph (f)(2) of Rule 19b–4 thereunder,[10] because it establishes or changes a due, fee, or other charge imposed by Nasdaq. At any time within 60 days after 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 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.

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*–3(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NASD–2003–171. This file number should be included on the subject line if e-mail is used. To help the Commission 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 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–2003–171 and should be submitted by January 14, 2004.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31643 Filed 12–23–03; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48938; File No. SR–NASD–2003–170]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Reduce Fees for the Use of the Automated Confirmation Transaction Service (ACT)

December 17, 2003.

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 November 24, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder[4] as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization, 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

Nasdaq proposes to reduce fees for the use of the Automated Confirmation Transaction Service (''ACT'').[5] The new fee schedule will be implemented beginning on December 1, 2003. Additionally, the proposed rule change (i) makes minor modifications to the rule language describing the existing discount for transactions in Nasdaq-listed securities through the Nasdaq National Market System (''NNMS''), (ii) deletes a reference to a ''terminal fee'' for an ''ACT only terminal,'' because Nasdaq no longer provides this service, and (iii) deletes text describing a three-month trial period following the introduction of the ACT Workstation, since the text refers to a period that has fully transpired. The text of the proposed rule change is available at Nasdaq and at the Commission.

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 for transactions reported to Nasdaq, including trades in Nasdaq-listed securities, exchange-listed securities, and OTC Bulletin Board securities. ACT handles transactions executed through Nasdaq's automated trading systems, as well as transactions negotiated directly between market participants and transactions that are internalized by market participants.

As part of an ongoing effort to reduce the costs incurred by market participants to use Nasdaq services, Nasdaq is reducing the fees for trade reports in exchange-listed securities by introducing a volume-based discount. The discount applies to all reports in ITS Securities, a term defined in NASD Rule 5210(c) that includes all securities listed on the New York Stock Exchange, the American Stock Exchange, and other exchanges whose listed securities trade through the Intermarket Trading System (defined as ''ITS Covered Transactions''). Thus, the discounts offered by the proposed rule change apply to reports that are automatically generated by Nasdaq's automated systems for trading exchange-listed securities,[6] as well as internalized trades in ITS Securities and reports for such securities submitted pursuant to ''automated give-up'' (''AGU'') and Qualified Service Representative (''QSR'') arrangements.[7] 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 trade reports during a particular month would depend upon the volume of media transaction reports for ITS Covered Transactions (i) that were submitted to ACT automatically by a Nasdaq trading system and in which the participant was identified as the reporting party,[8] or (ii) that were submitted or introduced to ACT by the participant (regardless of what party is identified as the reporting party).[9] If an ACT participant's average daily volume of such media trade reports was 5,000 or less, its fee for all ACT reports for ITS Covered Transactions during the month would be $0.029 per report. An ACT participant with an average daily volume of more than 5,000 media reports, however, would pay $0.029 per report for a number of reports equal to 5,000 times the number of trading days in the month, but all additional reports during the month would be free.

Nasdaq is also making minor modifications to the rule language describing the existing discount for transactions in Nasdaq-listed securities through the NNMS. These modifications do not alter the substance of this discount, under which the $0.029 fee for reports of trades in Nasdaq-listed securities through the NNMS is waived during any month in which a market participant is a party (either reporting or non-reporting) to an average daily volume of at least 10,000 reports of such trades during the month. As with the proposed discount for ITS Securities, Nasdaq determines eligibility for the NNMS discount by aggregating activity associated with all of the MPIDs associated with a single CRD number (but not activity associated with MPIDs assigned to subsidiaries or other affiliates with a different CRD number).

Finally, Nasdaq is deleting a reference to a ''terminal fee'' for an ''ACT only terminal,'' a service that Nasdaq no longer provides, and is deleting text describing a three-month trial period following the introduction of the ACT Workstation, since the text refers to a period that has fully transpired.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[10] in general, and with section 15A(b)(5) of

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] This proposed rule change applies to usage of ACT by NASD members. The usage of ACT by non-members is governed by NASD Rule 6120.

[6] At present, those systems are the Intermarket Trading System/Computer Assisted Execution System (''ITS/CAES'') and Primex. However, Nasdaq has recently proposed to allow the trading of exchange-listed securities through the Nasdaq National Market Execution System (''NNMS''). *See* SR–NASD–2003–149 (October 3, 2003). At the time of implementation of SR–NASD–2003–149, the fee schedule adopted herein (rather than the fee schedule for trades in Nasdaq National Market and SmallCap Market securities executed through the NNMS) will apply to reports of executions of ITS Securities through the NNMS (unless Nasdaq amends its ACT fee schedule prior to that time).

[7] AGU and QSR arrangements allow a participant to report trades executed with other brokers with whom they have entered into a contractual relationship.

[8] Volume will be measured with reference to the market participant identifier (''MPID'') appearing in the reporting party field of 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 trade reports with those associated with MPIDs assigned to subsidiaries or other affiliates with a different CRD number.

[9] Volume will be measured with reference to the MPID of the submitting or introducing party as reflected in the data received by Nasdaq in the trade report, with aggregation of multiple MPIDs associated with a single CRD number.

[10] 15 U.S.C. 78o–3.

the Act,[11] 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 proposed rule change recognizes the economies of scale and scope associated with higher volumes of trade reports, and will make it more economical for many market participants to use ACT for reporting their trading activity in exchange-listed securities. The proposed rule change is similar in structure to discounts implemented by Nasdaq for Nasdaq-listed stocks within the past year.[12]

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

Written comments were neither solicited nor received.

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

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [13] and subparagraph (f)(2) of Rule 19b–4 thereunder,[14] because it establishes or changes a due, fee, or other charge imposed by NASD. 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.

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 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-comments @sec.gov.* All comment letters should refer to File No. SR–NASD–2003–170. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your 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 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–2003–170 and should be submitted by January 14, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31645 Filed 12–23–03; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78o–3(b)(5).

[12] See Securities Exchange Act Release Nos. 47661 (April 10, 2003), 68 FR 19045 (April 7, 2003) (SR–NASD–2003–51) and 47919 (May 23, 2003), 68 FR 32788 (June 2, 2003) (SR–NASD–2003–86).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48933; File No. SR–NASD–2002–168]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Order Granting Approval of Proposed Rule Change and Amendment No. 1, Thereto, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2, Thereto, Relating to Proposed NASD Rule 2130 Concerning the Expungement of Customer Dispute Information From the Central Registration Depository System

December 16, 2003.

I. Introduction and Description of the Proposal

On November 19, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change that would: (1) Require all directives to expunge customer dispute information from the Central Registration Depository (''CRD'or ''CRD system'') to be confirmed by or ordered by a court of competent jurisdiction; (2) require member firms and associated persons seeking expungement to name NASD as an additional party in any judicial proceeding seeking expungement relief or confirming an arbitration award containing expungement relief; and (3) permit member firms and associated persons to ask NASD to waive the requirement to name NASD as a party on the basis that the expungement order meets at least one of the standards for expungement articulated in the proposed rule.

On January 28, 2003, NASD submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on March 10, 2003.[4] The Commission received 28 comments on the proposal from a wide range of sources. The NASD responded to these comments by amending the filing on September 11, 2003.[5] This order approves the proposed rule change, as amended by Amendment No. 1. In addition, the Commission is publishing a notice to solicit comment on and is simultaneously approving, on an accelerated basis, Amendment No. 2 to the proposal. Below is the text of the proposed rule change, as amended by Amendment No. 2. Deletions of the proposed rule text, which was published in the Notice, appear in [brackets]; proposed rule language to be added by Amendment No. 2 appears in *italics.*

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter, dated January 28, 2003, from Patrice M. Gliniecki, Vice President and Deputy General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 47435 (March 4, 2003), 68 FR 11435 (''Notice'').

[5] *See* letter from Shirley H. Weiss, Associate General Counsel, Office of the General Counsel, NASD, to Jonathan G. Katz, Secretary, Commission (September 11, 2003) (''Amendment No. 2''). In Amendment No. 2, the NASD made certain changes to its proposed rule text in response to comments received by the Commission in connection with the filing. The Amendment No. 2 rule text changes are published in their entirety and discussed at length below.