

classes by the appropriate Allocation Committee.<sup>11</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether Amendment No. 1 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 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 No. SR-CBOE-2002-18, Amendment No. 1, and should be submitted by March 7, 2003.

#### V. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>12</sup> In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>13</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

The proposed rule change will require that a DPM own an Exchange membership or seat for every trading location, *i.e.*, any separate, identifiable unit of a DPM organization that applies for and is allocated options classes by the appropriate Allocation Committee. The Commission believes that the Exchange's effort to ensure stability in its options market by amending the

DPM seat ownership requirements is not unreasonable. By requiring each DPM to own an Exchange membership per trading location, the Exchange seeks to ensure a DPM's long-term commitment to the Exchange. The proposal should discourage entities from seeking short-term DPM appointments, which could be disruptive to the trading of allocated options classes, because DPMs will be required to make a substantial financial commitment to the Exchange. DPMs that own a membership in the Exchange should be more willing to invest the time, effort, and funding needed to build and foster a stable market place for the trading of their allocated options classes. This should provide enhanced trading benefits to investors by increasing liquidity and trading stability. Moreover, the proposal could help to preserve the integrity of the Exchange because DPMs will have a vested interest in ensuring that the Exchange maintains high standards.

Further, the Commission believes that the proposed amendment to the DPM seat ownership requirement should provide incentives to DPMs that are allocated existing CBOE options, or seeking allocations in established option classes, to maintain sufficient capital to operate as a DPM, which should result in greater liquidity and investor protections in those options classes. The proposal could further CBOE's interest in securing long-term commitments to the Exchange because members that are committed to the Exchange should have greater incentives to ensure the orderly and effective operation of the market.

The proposed rule change also eliminates the provision allowing a senior principal of a DPM to own a required membership instead of the DPM organization for the purpose of satisfying a DPM's seat ownership requirements. Instead, each DPM organization would be required to maintain direct ownership of any seats pursuant to CBOE Rule 8.85(e). The Commission believes that this requirement is consistent with the Act. In particular, the Commission believes that eliminating a DPM's ability to fulfill its seat ownership requirement through a principal's ownership could enhance the Exchange's ability to monitor DPM compliance with CBOE Rule 8.85 by helping to eliminate any confusion that may result from industry consolidation or a principal's leaving or joining a DPM organization. The Commission believes that by requiring the DPM organization to have direct ownership of the seat, the proposal could help assure the DPM's long-term commitment to the Exchange, and its willingness to invest the time, effort, and funding needed to build and

foster a stable market place for the trading of its allocated options classes.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. CBOE filed Amendment No. 1 in response to comments it received after the publication of the notice of the filing of the proposed rule change, to clarify the definition of the term "trading location." Because Amendment No. 1 is responsive to the commenter's concerns, the Commission finds good cause for accelerating approval of the proposed rule change, as amended by Amendment No. 1.

#### VI. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change, as amended, (File No. SR-CBOE-2002-18) be, and it hereby is approved.

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

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 03-3716 Filed 2-13-03; 8:45 am]

BILLING CODE 8010-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47331; File No. SR-NASD-2003-09]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Fees Applicable to the NASD Alternative Display Facility

February 10, 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 January 30, 2003, the National Association of Securities Dealers, Inc. ("NASD") 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. NASD has designated the proposed rule change as one that establishes or changes a due, fee or other charge imposed by NASD pursuant to

<sup>11</sup> See Amendment No. 1, *supra* note 5.

<sup>12</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</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.

paragraph (f)(2) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by 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**

NASD is proposing to amend the NASD Rule 7000A Series to designate transaction and quotation related fees applicable to activities in the NASD's Alternative Display Facility ("ADF"). The text of the proposed rule change is set forth below. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

**7000A. Charges for ADF Services and Equipment**

*7010A. System Services*

(a) Trade *Reporting and Comparison* [and Reporting] Service  
 The following charges shall be paid by ADF participants for use of the Trade *Reporting and Comparison* [and Reporting] Service (TRACS):  
 Transaction Related Charges:  
 Comparison \$0.014/side per 100 shares (minimum 400 shares; maximum 7,500 shares)  
 Automated Give-Up \$0.029/side (if the associated publicly disseminated trade is not reported to the media through the ADF)  
 Qualified Special Representative \$0.029/side (if the associated publicly disseminated trade is not reported to the media through the ADF)  
 Late Report—T+N \$0.30/side unless the trade is executed outside normal ADF operating hours of 8:00 a.m. to 6:30 p.m. and the member's average publicly disseminated trades reported to the

media through the ADF per day during the billing period is 150,000 or greater

[Browse/query \$0.28/query\*]  
 [Trade Reporting \$0.029/side (applicable only to reportable transaction not subject to trade comparison through TRACS) \*\*]

Corrective Transaction Charge \$0.25/ Break, Decline, *Reversal* transaction, paid by each party

(b) Quotation Updates

The following quotation update charges will apply based on the average daily number of publicly disseminated trades reported to the media through the ADF during the billing period. [A member will be charged \$0.01 per quotation update in the ADF quotation montage on those quotation updates that exceed three times the number of transactions reported to the ADF by the member.] A "quotation update" includes any change to the price or size of a displayed quotation. [This charge will be determined on a monthly basis.]

Average trades reported through the ADF per day	Quotation update charge	Quotes update provided at no charge
Less than 1 .....	\$.02 per quotation update .....	None.
Between 1 and 100,000 .....	\$.01 per quotation update .....	5 quotation updates per trade.
Between 100,001 and 150,000 .....	\$.01 per 10 quotation update .....	10 quotation updates per trade.
Greater than 150,000 .....	No Charge .....	N/A

[(c) Volume Discounts on Transaction and Quotation Fees

During the initial six months of operation of the ADF, except as

provided in paragraph (d) below, transaction fees incurred pursuant to paragraph (a) above, except the browse/query fee, and quotation update fees

incurred pursuant to paragraph (b) above will be discounted on the following incremental basis:]

Trades per month	Chargeable quotation updates per month	Discount
Up to 2,000 .....	Up to 8,000 .....	0%
2,001 to 4,000 .....	8,001 to 15,000 .....	10%
4,001 to 6,000 .....	15,001 to 25,000 .....	25%
6,001 to 8,000 .....	25,001 to 35,000 .....	35%
8,001 or greater .....	35,001 or greater .....	50%

[(d) Limited Period Without Transaction and Quotation Charges]

[During the initial six months of operation of the ADF, members will not be charged for transaction fees incurred pursuant to paragraph (a) above and the quotation fees incurred pursuant to paragraph (b) above for up to a three-month period. The three-month "no transaction" fee period begins on the first day on which a member has incurred charges under paragraph (a) or paragraph (b) above, and will continue

until the earlier of three months or the end of the six-month period.]

\* \* \* \* \*

*7040A. Installation, Removal, Relocation or Maintenance*

ADF subscribers shall pay a minimum charge of \$5,000 for installation costs associated with connecting to the ADF. Upon installation, removal, relocation or maintenance of terminal and related equipment, or combination thereof, the subscriber shall pay charges incurred by NASD or its subsidiaries above the

\$5,000 minimum, on behalf of the subscriber for the work being performed by the maintenance organization retained by NASD or its subsidiaries. Upon payment of \$5,000 under this provision, members will receive a credit of up to \$5,000 to be used toward [their trade reporting and comparison] charges imposed under Rule 7010A(a) and (b).

\* \* \* \* \*

<sup>3</sup> 17 CFR 240.19b-4(f)(2).

[\* Each TRACS query incurs the \$0.28 fee; however, the first accept or decline processed for a transaction is free, to insure that no more than

\$0.28 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 \$0.28 query charge.]

[\*\* The trade reporting service charge is applicable to those trades input into TRACS for reporting purposes only, such as NSCC Qualified Special Representative reports and reports of internalized transactions.]

## 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

#### 1. Purpose

On July 24, 2002, the Commission approved SR-NASD-2002-97,<sup>4</sup> which authorizes NASD to operate the ADF on a pilot basis for nine months, pending the anticipated approval of SR-NASD-2001-90,<sup>5</sup> which proposes to operate the ADF on a permanent basis. As described in detail in SR-NASD-2001-90, the ADF is a quotation collection, trade comparison, and trade reporting facility developed by NASD in accordance with the Commission's SuperMontage Approval Order<sup>6</sup> and in conjunction with Nasdaq's anticipated registration as a national securities exchange.<sup>7</sup>

For the duration of the pilot period, ADF will provide ADF market participants (market makers and ECNs) the ability to post quotations in Nasdaq securities and will provide all members that participate in the ADF the ability to view quotations and report transactions in Nasdaq securities to the Exclusive Securities Information Processor ("SIP") for Nasdaq-listed issues for consolidation and dissemination of data to vendors and ADF market participants. The facility also will provide for trade comparison through the Trade Reporting and Comparison Service ("TRACS"). This mechanism operates similarly to the trade reporting functions of Nasdaq's Automated Confirmation Transactions Service ("ACT").<sup>8</sup>

In SR-NASD-2002-97, NASD proposed the Rule 7000A Series, which provides the fee structure applicable to quotation and transaction-related activities through the ADF. Pursuant to that fee structure, NASD has not been charging ADF participants for transaction and quotation update fees (Rules 7010A(a) and (b), respectively) for a period of up to three months during the initial six months of operation of the ADF (from July 29, 2002 to January 29, 2003). Also during the first six-months of the ADF's operation, but subsequent to the three-month "no charge" period, ADF participants are eligible for certain volume discounts to make the overall cost of trade reporting and quoting through the ADF more attractive to higher volume users.

Given that the six-month "no charge/volume discount" fee structure is scheduled to end on January 29, 2003, NASD staff has been reviewing the ADF fee structure and now is proposing a new fee structure to commence on February 17, 2003. Specifically, NASD is proposing to eliminate trade reporting fees, browse/query and Automated Give-Up ("AGU")/NSCC Qualified Special Representative ("QSR") comparison charges (provided that the associated publicly disseminated trade is reported to the media through the ADF). With respect to "as of" trades, NASD is proposing to continue to charge \$0.30/side unless the "as of" trade is executed outside normal ADF operating hours of 8:00 a.m. to 6:30 p.m. and the member's daily average of publicly disseminated trades reported to the media through the ADF during the billing period is 150,000 or greater. NASD will continue to charge for corrective transactions. As a result, only the following TRACS-related fees will continue to apply: Comparison Fee of \$0.014/side per 100 shares (minimum 400 shares; maximum 7,500 shares); Late Report—T+N fee of \$0.30/side under the circumstances noted above; and Corrective Transaction Charge<sup>9</sup> of \$0.25, paid by each party. AGU/QSR comparison charges of \$0.029/side would apply only if the associated trade is not reported to the ADF.

With respect to quotation activities, quotation update charges<sup>10</sup> would vary depending on the number of publicly disseminated trades reported to the media through the ADF during normal ADF processing hours of 8:00 a.m. to

6:30 p.m. Specifically, quotation update charges would apply based on the average number of publicly disseminated trades reported to the media through the ADF per day during the billing period. If an ADF market participant's average trades reported to the media through the ADF per day during the billing period is less than one, the quotation charge applicable to that ADF market participant would be \$.02 per quotation update. Similarly, if an ADF market participant's average trades reported to the media through the ADF per day is between one and 150,000, the quotation charge applicable to that ADF market participant would be \$.01 per quotation update. Finally, if an ADF market participant's average trades reported to the media through the ADF per day during the billing period is greater than 150,000, no quotation update charges would apply.

The proposed fee structure also would provide for a certain number of quotation updates at no charge based on the average number of publicly disseminated trades reported to the media through the ADF per day during the billing period. Specifically, if an ADF Market Participant averages between one and 100,000 trades reported through the ADF per day, the market participant would receive five free quotes per trade during that billing period. If a market participant averages between 100,001 and 150,000 trades reported to the media through the ADF per day, it would receive 10 free quotes per trade during that billing period.

By imposing quotation fees based on the number of publicly disseminated trades reported to the media through the ADF, this fee structure will fairly impose costs on those members whose quotation activity creates system capacity demands, and therefore costs that are not covered by the revenue received from trades reported to the media through the ADF.

Members currently are charged a minimum of \$5,000 for installation costs associated with connecting to the ADF. The ADF, however, provides market participants with a credit of up to \$5,000 toward their trade reporting and comparison charges. Given the revised fee structure, NASD is proposing to amend Rule 7040A to permit the \$5,000 credit to be used toward any of the fees imposed under Rule 7010A(a) or (b), including quotation fees.

Finally, for administrative ease, NASD also is proposing to extend the current "no charge" period until February 14, 2003 and have the fee changes described herein commence February 17, 2003. As a result, ADF participants will continue not to be

<sup>4</sup> Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002).

<sup>5</sup> Securities Exchange Act Release No. 45991 (May 28, 2002), 67 FR 39476 (June 7, 2002).

<sup>6</sup> Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (File No. SR-NASD-99-53).

<sup>7</sup> Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001) (File No. 10-131).

<sup>8</sup> TRACS does not perform risk management services that are provided by Nasdaq's ACT.

<sup>9</sup> NASD also is proposing to add "Reversals" to the types of corrective transactions under Rule 7010A(a). Reversals are trade corrections made T+N.

<sup>10</sup> A "quotation update" includes any change to the price or size of a displayed quotation.

charged for transaction and quotation update fees under Rules 7010A(a) and (b), respectively until February 17, 2003.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>11</sup> which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will provide a cost effective and efficient mechanism to quote and report trades on the ADF. The proposed rule change also is consistent with Section 15A(b)(5) of the Act<sup>12</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 that NASD operates or controls. NASD believes that this fee structure is a reasonable means for the NASD to recover the development costs of the ADF, as well as meet ongoing operating costs.

### 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.

### 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

NASD has designated the proposed rule change as establishing or changing a due, fee, or other charge under section 19(b)(3)(A)(ii) of the Act<sup>13</sup> and Rule 19b-4(f)(2) thereunder,<sup>14</sup> which renders the proposal effective upon receipt of this filing by the Commission. At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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.

<sup>11</sup> 15 U.S.C. 78o-3(b)(6).

<sup>12</sup> 15 U.S.C. 78o-3(b)(5).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

## 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. 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 the 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-2003-09 and should be submitted by March 7, 2003.

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

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 03-3714 Filed 2-13-03; 8:45 am]

**BILLING CODE 8010-01-P**

## DEPARTMENT OF STATE

### Bureau of Political-Military Affairs

[Public Notice 4277]

### Notice of Information Collection Under Emergency Review: Form DS-4028, Request for Approval of Technical Assistance Agreement Cover Letter; Form DS-4029, Request for Approval of Technical Assistance Agreement; OMB Control Number 1405-XXXX

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

The following summarizes the information collection submitted to OMB:

*Type of Request:* Emergency Review.

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

*Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DTC.

*Title of Information Collection:* Request for Approval of Technical Assistance Agreement Cover Letter and Request for Approval of Technical Assistance Agreement.

*Frequency:* Not More Than 12 Per Week.

*Form Numbers:* DS-4028 and DS-4029.

*Respondents:* Businesses.

*Estimated Number of Respondents:* 13.

*Average Hours Per Response:* 2 hours.

*Total Estimated Burden:* 6,240 hours.

(Total Estimated Burden based on maximum number of requests that may be received during 5-month pilot program.)

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by February 9, 2003. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202-395-3897.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until 60 days from the date that this notice is published in the **Federal Register**. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

**FOR ADDITIONAL INFORMATION:** Public comments, or requests for additional information, regarding the collection listed in this notice should be directed