

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,⁶ 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.⁷ 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

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,⁸ in general and with section 15A(b)(5) of the Act,⁹ 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 Act¹⁰ and subparagraph (f)(2) of Rule 19b-4 thereunder,¹¹ 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,

⁷ 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).

⁸ 15 U.S.C. 78o-3.

⁹ 15 U.S.C. 78o-3(b)(5).

¹⁰ 15 U.S.C. 78s(b)(3)(a)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

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