

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 Amex. All submissions should refer to file number SR-Amex-2003-109 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. 03-31644 Filed 12-23-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48935; File No. SR-NASD-2003-171]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify CAES and ITS Pricing

December 17, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

Average daily share volume executed in CAES or through the ITS/CAES linkage during a month (both NYSE & AMEX listed securities):

0 to 499,999

500,000 or more

Average daily share volume executed in CAES or through the ITS/CAES linkage (both NYSE & AMEX listed securities):

1 or more

(e) through (u) 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

("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 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 Nasdaq under section 19(b)(3)(A)(ii) of the Act,³ and Rule 19b-4 thereunder,⁴ 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 certain changes to NASD Rule 7010 ("System Services") to amend the transaction charges for users of the Computer Assisted Execution System ("CAES") and of the CAES linkage with the InterMarket Trading System ("ITS"). Nasdaq will implement the proposed rule change on December 1, 2003.

The text of the proposed rule change is below.⁵ Proposed new language is in *italics*; proposed deletions are in brackets.

* * * * *

7010. System Services

(a) through (c) No change.

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.

(d) Computer Assisted Execution Service. The charges to be paid by members receiving the Computer Assisted Execution Service (CAES) shall consist of a fixed service charge and a per transaction charge plus equipment related charges.

(1) Service Charges

\$100 per month for each market maker terminal receiving CAES.

(2) Transaction Charges and Credits

[(A) \$0.003 per share executed up to a maximum of \$75 per execution shall be paid by any order entry firm or CAES market maker that enters an order into CAES that is executed in whole or in part, and \$0.0015 per share executed up to a maximum of \$50 per execution shall be credited to the CAES market maker that executes such an order.

(B) \$0.002 per share executed up to a maximum of \$75 per execution shall be paid by any member that sends a commitment through the ITS/CAES linkage to buy or sell a listed security that is executed in whole or in part, and \$0.0015 per share executed up to a maximum of \$37.50 per execution shall be credited to a member that executes such an order.]

(A) *Orders to buy or sell securities listed on the New York Stock Exchange: no charge and no credit.*

(B) *Orders to buy or sell securities not listed on the New York Stock Exchange:*

Fee per share executed for orders entered into CAES or commitments sent through the ITS/CAES linkage if such an order or commitment is executed in whole or in part:

\$0.0027, with a maximum of \$75 per execution

\$0.0025, with a maximum of \$75 per execution

Liquidity rebate per share executed for orders/quotes posted into CAES, if such an order/quote is executed in whole or in part:

\$0.002, with a maximum of \$37.50 per execution

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

1. Purpose

Nasdaq proposes to modify certain transaction charges for users of CAES and the CAES/ITS linkage. Nasdaq

rule change. Telephone conversation between Alex Kogan, Attorney, Nasdaq, and Ian K. Patel, Attorney, Division of Market Regulation, Commission, dated December 5, 2003.

¹¹ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

²⁷ 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4.

⁵ The Commission made technical changes to the rule text to address minor errors in the proposed