

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.

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 Act⁹ 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.

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.

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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

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.

⁷ 15 U.S.C. 78o-3.

⁸ 15 U.S.C. 78o-3(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.