

January 30, 2003

Katherine A. England
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-1001

Re: File No. SR-NASD-2003-009
Fees Relating to the NASD Alternative Display Facility

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed please find the above-numbered rule filing. Also enclosed is a 3-1/2" disk containing the rule filing in Microsoft Word 7.0 to facilitate production of the Federal Register release.

If you have any questions, please contact Stephanie M. Dumont, Office of General Counsel, NASD, Inc., at (202) 728-8176; e-mail stephanie.dumont@nasd.com. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Barbara Z. Sweeney
Senior Vice President
and Corporate Secretary

Enclosures

File No. SR-NASD-2003-009

Consists of 19 Pages

January 30, 2003

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C.

Form 19b-4

Proposed Rule Change

by

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Pursuant to Rule 19b-4 under the
Securities Exchange Act of 1934

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”), the National Association of Securities Dealers, Inc. (“NASD” or “Association”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend the NASD Rule 7000A Series relating to transaction and quotation related fees applicable to activities in the NASD’s Alternative Display Facility (“ADF”). Pursuant to Section 19(b)(3)(A) of the Act and subparagraph (f) of Rule 19b-4 thereunder, the proposed rule change will become immediately effective upon Commission receipt in that it establishes or changes a due, fee or other charge imposed by NASD. The proposed rule change will apply during the time that the ADF operates on a pilot basis. The Commission previously approved the ADF as a nine-month pilot to quote and trade only Nasdaq-listed securities.¹

The text of the proposed rule change is set forth in Exhibit 2. Proposed new language is underlined; proposed deletions are in brackets.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The Executive Committee of the NASD Board of Governors reviewed and approved the proposed rule change at its meeting on December 6, 2002 and the NASD Board of Governors approved the proposed rule change at its January 23, 2003 meeting. No other action by the NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of

¹ See Exchange Act Release No. 46249 (July 24, 2002), (File No. SR-NASD-2002-97).

the NASD By-Laws permits the NASD Board of Governors to adopt amendments to NASD Rules without recourse to the membership for approval.

As further discussed below, NASD is filing the proposed rule change for immediate effectiveness, with an implementation date of February 17, 2003 for the new fee structure described herein. In addition, NASD is proposing to extend the “no charge” period until February 14, 2003, such that ADF participants will continue not to be charged for transaction and quotation update fees under Rules 7010A(a) and (b), respectively until February 17, 2003. The proposed rule change will expire at the same time that SR-NASD-2002-97 expires. NASD will announce the proposed rule change in a Notice to Members to be published no later than 30 days after the date of the filing.

(b) Questions regarding this rule filing may be directed to Stephanie M. Dumont, Associate General Counsel, Office of General Counsel, NASD, at (202) 728-8176.

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

(a) Purpose

On July 24, 2002, the Commission approved SR-NASD-2002-97, which authorizes NASD to operate the ADF on a pilot basis for nine months, pending the anticipated approval of SR-NASD-2001-90, 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 Order² and in conjunction with Nasdaq's anticipated registration as a national securities exchange.³

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").⁴

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.

² Exchange Act Release No. 43863 (January 19, 2001), 66 Fed. Reg. 8020 (January 26, 2001) (File No. SR-NASD-99-53).

³ Exchange Act Release No. 44396 (June 7, 2001), 66 Fed. Reg. 31952 (June 13, 2001) (File No. 10-131).

⁴ TRACS does not perform risk management services that are provided by Nasdaq's ACT.

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 Charge⁵ 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 charges⁶ 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

⁵ NASD also is proposing to add “Reversals” to the types of corrective transactions under Rule 7010A(a). Reversals are trade corrections made T+N.

⁶ A “quotation update” includes any change to the price or size of a displayed quotation.

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

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, 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 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.

4. Self-Regulatory Organization's Statement on Burden on Competition

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, as amended.

5. 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.

6. Extension of Time Period for Commission Action

The NASD does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act and paragraph (f)(2) of Rule 19b-4 thereunder, in that the proposed rule change establishes or changes a due, fee or other charge imposed by NASD.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.
2. Text of proposed rule change.

Pursuant to the requirements of the Securities Exchange Act of 1934, the NASD has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

NASD, INC.

BY: _____
Barbara Z. Sweeney
Senior Vice President and Corporate Secretary

Date: January 30, 2003

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASD-2003-009)

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

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 , 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 paragraph (f)(2) of Rule 19b-4 under the Act,³ 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 in Exhibit 2. Proposed new language is underlined; proposed deletions are in brackets.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(2).

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

(a) Purpose

On July 24, 2002, the Commission approved SR-NASD-2002-97, which authorizes NASD to operate the ADF on a pilot basis for nine months, pending the anticipated approval of SR-NASD-2001-90, 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 Order⁴ and in conjunction with Nasdaq's anticipated registration as a national securities exchange.⁵

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

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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”).⁶

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

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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 Charge⁷ 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 charges⁸ 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.

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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.

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

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, 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 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, 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

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 Act⁹ and Rule 19b-4(f)(2) thereunder,¹⁰ 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.

⁹ 15 U.S.C. § 78s(b)(3)(A)(ii).

¹⁰ 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland
Deputy Secretary

EXHIBIT 2**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 <u>(if the associated publicly disseminated trade is not reported to the media through the ADF)</u>
<u>Qualified Special Representative</u>	<u>\$0.029/side (if the associated publicly disseminated trade is not reported to the media through the ADF)</u>
Late Report - T+N	\$0.30/side <u>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</u>
[Browse/query	\$0.28/query*]

[* 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.]

[Trade Reporting	\$.029/side (applicable only to reportable transaction not subject to trade comparison through TRACS) ^{**}]
Corrective Transaction Charge	\$0.25/ Break, Decline, <u>Reversal</u> 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.]

<u>Average Trades Reported through the ADF Per Day</u>	<u>Quotation Update Charge</u>	<u>Quotes Updates Provided at No Charge</u>
<u>Less than 1</u>	<u>\$.02 per quotation update</u>	<u>None</u>
<u>Between 1 and 100,000</u>	<u>\$.01 per quotation update</u>	<u>5 quotation updates per trade</u>
<u>Between 100,001 and 150,000</u>	<u>\$.01 per quotation update</u>	<u>10 quotation updates per trade</u>
<u>Greater than 150,000</u>	<u>No Charge</u>	<u>N/A</u>

[^{**} 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.]

[(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).

* * * * *