in the number of Nasdaq-listed securities, there were 4,965 Nasdag listings at year-end 1989 compared with 5,731 in October, 1994; this represents an increase of 15.5%. Real-trade reporting for OTC equities was initiated in December, 1993 with a total of 3,652 issues in the OTCBB at year-end. By October, 1994, this figure increased to 5,168 issues, which represents an increase of 41.5%.3 Thus, at the present time, NASD members routinely use the Service to report and compare trades in nearly 11,000 securities. The foregoing information was factored into the calculation of the revised ACT fees.

Additionally, the proposal is designed to recoup certain network costs attributable to provisions of ACT through the Enterprise Wide Network ("EWN").4 The EWN is the communications component of Nasdaq's system upgrade which will deliver the second generation of Nasdaq Workstation service functionality ("NWII") to market participants. NWII is currently being phased-in. While the NWII phase-in proceeds, ACT functionality must be provided via the EWN as well as the older network. Therefore, a portion of the fee increase will recoup the network costs associated with providing ACT to member firms using the NWII service.5

The NASD believe that the proposed rule change is consistent with the requirements of Section 15A(b)(5) of the Act. Section 15A(b)(5) specifies that the rules of a national securities association shall provide for the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using any facility or system that the association operates or controls. In this instance, the increased fees being proposed relate to a package of automation services available only to NASD member firms that qualify as

ACT participants. The proposed fee increase is the first such increase since ACT became operational in 1989 and is necessary to offset the network costs associated with delivering ACT to approximately 1300 member firms. 6 As noted above, the increased network costs which this proposal is designed to recoup have occurred as a result of the NASD's expanded trade reporting requirements, the growth in trade volume experienced by the Nasdaq and OTCBB market segments in recent years, and the roll-out of the NWII. In light of these factors, the NASD and NSMI submit that the proposed increase in ACT fees is necessary and appropriate to achieve an equitable allocation of reasonable fees among NASD members using the Service.

(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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4 because the proposal constitutes a change in a due, fee, or other charge for a package of automated services provided only to NASD member firms. At any time within 60 days of the filing of such 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. 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 with 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 (SR-NASD-94-73) 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.<sup>7</sup>

## Margaret H. McFarland,

Deputy Secretary.
[FR Doc. 94–192 Filed 1–4–95; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–35167; File No. SR–NASD–94–75]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Modification of Filing Fees Under Sections 43(e) and 44(e) of the NASD's Code of Arbitration Procedure

December 28, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 13, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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. The NASD has designated this proposal as one establishing or changing a fee under Section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>&</sup>lt;sup>3</sup>Additionally, ACT processes trade reports and effects trade comparisons on approximately 1,000 OTC equities that are not quoted in the OTCBB. This subset of OTC equities is characterized by moderate trade volume and the regular submission of trade reports by member firms.

<sup>&</sup>lt;sup>4</sup>The EWN will increase the capacity of the communications network supporting Nasdaq more than fivefold (9,600 baud to 56,000 baud). The software driving NWII is windows-based and will contain a number of data management features that are not available in the original Nasdaq Workstation service that resides in the 9600 baud network.

<sup>&</sup>lt;sup>5</sup> Section (a)(2) of the Rules of Practice and Procedure for the Automated Confirmation Transaction Service defines an ACT participant to be a member firm registered with the NASD in a market making capacity, or a member firm that functions as an order entry firm, a clearing broker-dealer, correspondent executing broker-dealer, or introducing broker-dealer. Because ACT participation is defined in this manner, ACT fees are only assessed against those member firms that actually use the Service.

<sup>&</sup>lt;sup>6</sup> During the second half of 1995, ACT fees and ACT-related network costs will be reviewed to determine if the 1995 increase was sufficient to recover those costs. That review may reveal that a further increase is necessary.

<sup>&</sup>lt;sup>7</sup> 17 CFR 200.30–3(a)(12).