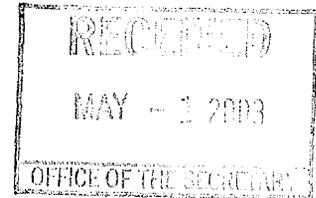


April 28, 2003



Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N. W.
Washington, D. C. 20549-0609

Re: File No. SR-NASD-2003-56

Dear Mr. Katz:

SunGard Trading Systems (“SunGard”) appreciates the opportunity to comment on the rule changes proposed by the National Association of Securities Dealers, Inc. (the “NASD”), through its subsidiary The Nasdaq Stock Market Inc. (“Nasdaq”) in File No. SR-NASD-2003-56 (the “Filing”).¹ SunGard processes a significant percentage of all over-the-counter transactions in Nasdaq securities through its various facilities, including Brass, UMA and B-Net. In this Filing, Nasdaq proposes to alter its Automated Confirmation Transaction Service (“ACT”) trade reporting fees in two ways. First, it proposes to provide volume discounts for internalized trades in Nasdaq stocks reported through ACT. Second, it proposes to waive ACT trade reporting fees for transactions executed in SuperMontage for a limited class of Nasdaq members. We are concerned that the Filing is designed to place Nasdaq members who chose to execute transactions on exchanges (“UTP Exchanges”) trading Nasdaq stocks or in the NASD’s Alternative Display Facility (“ADF”) (collectively the “Alternative Facilities”) at a serious competitive disadvantage, in contravention of Sections 11A, 15A(b)(9) and other provisions of the Securities Exchange Act of 1934 (the “Exchange Act”). The anti-competitive features of the Filing serve to compel market participants away from using the Alternative Facilities. In addition, the high volume requirements of the rule proposal discriminate against small market participants thereby placing a great economic burden on them. Therefore, we recommend that the SEC institute proceedings to disapprove SR-NASD-2003-56.

The stated purpose of the Filing is to reduce ACT reporting fees as part of an ongoing effort to reduce costs incurred by market participants who use Nasdaq. The Filing has two aspects. The first is a tiered volume discount that would reduce ACT reported fees for Locked-in trade reports include the following: Automated Give-Up (AGU), Qualified Service Representative (QSR), Primex Auction System[®] and internalized trades. The tiering would impose a fee of 2.9¢ for the

¹ Securities Exchange Act Release No. 34-47621, as amended. The release was published in the Federal Register on April 9, 2003.

first 10,000 trades, 1.5¢ for the next 40,000 trades and no fee for any remaining trades². The second aspect of the filing relates to transactions executed through SuperMontage (the “ACT Fee Waiver”). With respect to these transactions, the Filing would waive all fees if the participant meets three requirements for a particular month. The user must: 1) execute an average daily volume of 10,000 or more transactions through SuperMontage, 2) report to ACT at least 98% of the internalized transactions in Nasdaq National Market and Small Cap securities³ executed by the participant during the month and 3) post in SuperMontage at least 70% of the bids, offers and non-marketable limit orders in Nasdaq National Market and Small Cap Market securities communicated by the market participant to any market center⁴. If the market participant meets these three requirements, the Filing proposes to waive the 2.9¢ per trade fee for reporting of transactions executed through SuperMontage for that month.

SunGard does not object to the tiered pricing structure for locked-in trades reported through ACT. This type of volume discount is not unusual in the securities markets and recognizes that there are economies of scale that reduce costs as transaction volume increases. On the other hand, SunGard does object to the complete waiver of ACT fees for SuperMontage transactions. As proposed, the fees are anti-competitive and designed to impose punitive fees on smaller firms and firms that use Alternative Facilities.

The first troublesome aspect of the ACT Fee Waiver is the requirement that a market participant execute an average daily volume of 10,000 or more transactions in order to receive the Fee Waiver. This proposal creates a great disadvantage for smaller firms who are unable to achieve this high average daily volume and are therefore relegated to paying the full price for the reporting of SuperMontage transactions through ACT. Since SuperMontage provides the only practical means for order routing firms to access the liquidity reflected in SuperMontage and the use of ACT is mandatory for SuperMontage executions, participants who cannot meet the volume requirement have no alternative but to pay the full fee. This clearly does not meet the stated purpose of Nasdaq to insure “that each participant pays an equitable share of the costs associated with ACT.” Nasdaq’s rationale for offering free reporting of SuperMontage trades to firms that meet the Filing’s requirements is that lost revenue will be partially offset by other ACT revenue and transaction execution revenue. This is an illusory argument, however. Transaction revenues are the same for each trade at a particular share level. Thus, it makes no difference to Nasdaq whether a member reports one trade or a million. The revenue per trade (assuming the same size) will be the same on a per trade basis. Moreover, Nasdaq has stated in Head Trader Alert #2003-050 (March 28, 2003) that it intends to eliminate all ACT fees for locked-in trades in a June 2003 filing. Thus, there will be no additional ACT fees to offset the

² Nasdaq has stated in Head Trader Alert #2003-050, March 28, 2003, that it intends to eliminate these fees in the future.

³ Such terms shall have the meanings ascribed to them in NASD Rule _____.

⁴ The Filing defines a market center as any exchange market maker, OTC market maker, alternative trading system, national securities exchange or national securities association.

waived SuperMontage fees. As such, Nasdaq has not articulated any basis for the 10,000 share minimum.

We should note that this type of waiver is fundamentally different than the tiered pricing structure imposed for locked-in trades. Firstly, the fee structure for locked-in trades is purely based on volume; it does not include coercive measures that would deny the discount if a meaningful portion of internalized trades are executed elsewhere. Second, the fee structure for locked-in trades is graduated such that the first 10,000 trades and the next 40,000 trades are priced identically even if the user is eligible for zero priced trades thereafter. This tiered structure can at least be justified by generally recognized economies of scale.

In addition to the economic burden the volume requirement places on smaller market participants, the ACT Fee Waiver is also anti-competitive in its use of coercive requirements the mandate that a firm quote and execute a high percentage of its business in order to be eligible⁵. In order to be eligible for a fee waiver under the Filing, a Nasdaq member must report to ACT at least 98% of its internalized transactions in Nasdaq National Market and Small Cap securities during the month and post in SuperMontage at least 70% of its bids, offers and non-marketable limit orders in Nasdaq National Market and Small Cap Market securities communicated by the market participant to any market center. These requirements are blatantly anti-competitive and bear no relationship to any type of economies of scale. They plain and simply punish market participants for transacting anything other than very minimal business on the Alternative Facilities,

Extending such an anti-competitive pricing structure to SuperMontage could not be more contrary to the interests of market participants and other investors. The percentage requirements deprive market participants of choice in order venue by compelling them to report almost all of their internalized trades through ACT in order to cost effectively access liquidity in SuperMontage. The ACT Fee Waiver serves to completely discourage the use of the Alternative Facilities, thereby defeating the purpose of providing the Alternative Facilities as a viable alternative to ACT.

Nasdaq states that the only way for it to compete with exchanges that can offer free trade reporting services or engage in market data revenue sharing programs is to provide preferred pricing to its members that continue to support Nasdaq with their orders. However, no other market trading Nasdaq stocks has ever tried to impose fee incentives based on the percentage of orders sent to that market for execution.

The Exchange Act includes very specific requirements on exchange and association rules, including fees. Sections 6(b)(8) and 15A(b)(9) state that the rules of a national securities exchange or association cannot impose any burden on competition not necessary or

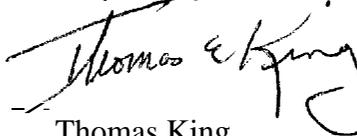
⁵ We would like to point out that these requirements are similar to the Full and Partial Participant concepts that Nasdaq attempted to impose and ultimately withdrew.

appropriate in furtherance of the purposes of the Act. We do not believe that the SEC can make a finding that the Fee Waiver meets this standard.

In reality and substance, the Fee Waiver is really an off board trading restriction in not very stealthy disguise. The genesis of the Commission's rules prohibiting exchanges from adopting rules restricting their members from doing business off an exchange was a Congressional finding that this type of rule **was** anti-competitive and contrary to the goals of the national market system. A rule such as the Fee Waiver is no different. By linking substantial fee reductions to execution of virtually all of one's principal trading with customers to a single market, the NASD is attempting to accomplish by a fee that which it clearly cannot do by regulation.

For the reasons articulated above, we do not believe that the rule change meets the statutory standard of providing for the "equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASD operates or controls."⁶ As such the ACT Fee Waiver is inconsistent with the Exchange Act and must be disapproved.

Very truly yours,



Thomas King
President

CC: Annette Nazareth
Director, Division of Market Regulation

Robert Colby
Deputy Director, Division of Market Regulation

⁶ Exchange Act Rule 15A(b)(5).