

November 7, 2002

Ms. Katherine A. England
Assistant Director
Division of Market Regulation
U.S. Securities and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549-1001

**Re: File No. SR-NASD-2002-147 – Amendment No. 2
Sunsetting Revisions to By-Laws Regarding the Regulatory Fee and the
Trading Activity Fee Established in SR-NASD-2002-98**

Dear Ms. England:

On July 24, 2002, NASD filed a proposed rule change (SR-NASD-2002-98) to Schedule A to the NASD By-Laws to eliminate the current Regulatory Fee assessed upon its members and to institute a new transaction-based Trading Activity Fee (“TAF”). NASD subsequently filed Amendment No. 1 to that filing on August 21, 2002. The proposed rule change was filed with the Securities and Exchange Commission (“SEC” or “Commission”) for immediate effectiveness pursuant to Section 19(b)(3)(A)(ii) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4(f)(2) thereunder.² The proposed rule change (SR-NASD-2002-98) was part of a package of two separate yet related rule filings submitted to the SEC as a result of a review of the overall NASD pricing structure.³ The SEC published these two proposed rule changes as a package on

¹ 15 U.S.C. 78s(b)(3)(A)(ii).

² 17 CFR 240.19b-4(f)(2).

³ The other rule filing was a proposed rule change that implemented a simplified three-tiered flat rate for the Gross Income Assessment (“GIA”) and increased the rates assessed to members under the Personnel Assessment (SR-NASD-2002-99). This rule filing was filed under Section 19(b)(1) and is still pending with the SEC.

August 30, 2002 in the Federal Register⁴ and received 15 comment letters, including submissions from market participants, national securities exchanges, and trade associations.

On September 27, 2002, NASD published the initial TAF rates. The TAF rates were as follows:

- \$0.0001 per share for each sale of a covered equity security.
- \$0.002 per contract for each sale of an option.
- \$0.08 per contract for each round turn transaction of a security future.

On October 3, 2002, NASD modified the TAF rates in response to members' comments to incorporate a per trade maximum, retroactively effective to October 1, 2002. The revised TAF rates were modified as follows: for each sale of a covered equity security, each member shall pay to NASD \$0.0001 per share, with a maximum charge of \$10 per trade; for each sale of an option, each member shall pay to NASD \$0.002 per contract; for each round turn transaction of a security future, each member shall pay to NASD \$0.08 per contract. Additionally, if the execution price for a covered equity security is less than the TAF rate (\$0.0001) on a per share basis then no fee will be assessed.

On October 18, 2002, NASD filed two subsequent rule filings with the SEC that are directly related to the original TAF rule filing, SR-NASD-2002-98. The first (SR-NASD-2002-147), which is amended by this filing, was a proposed rule change filed with the Commission for immediate effectiveness pursuant to Section 19(b)(3)(A)(iii) of the Act⁵ and Rule 19b-4(f)(3) thereunder.⁶ SR-NASD-2002-147 established a sunset provision that terminates on December

⁴ Securities Exchange Act Rel. No. 46416 (Aug. 23, 2002), 67 Fed. Reg. 55901 (Aug. 30, 2002) (SR-NASD-2002-98); Securities Exchange Act Rel. No. 46417 (Aug. 23, 2002), 67 Fed. Reg. 55893 (Aug. 30, 2002) (SR-NASD-2002-99).

⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

⁶ 17 CFR 240.19b-4(f)(3). The second rule filing (SR-NASD-2002-148) contained substantially the same rule language as proposed in SR-NASD-2002-98, but was submitted pursuant to Section 19(b)(1) of the Act to allow for an additional notice and comment period. NASD filed SR-NASD-2002-148 in response to comments made by NASD members that the TAF should not be filed as immediately effective, but instead should be given a full notice and comment period. In addition, this subsequent comment period allows NASD to examine further the impact of the published TAF rates currently in effect. NASD will adjust the TAF rates accordingly if they are inconsistent with the NASD's overall intent that its amendments to its pricing structure be revenue neutral. SR-NASD-2002-148 is to be read in conjunction with SR-NASD-2002-99. The two separate yet related rule filings are the result of a review of the overall NASD pricing structure and will be used to fund NASD's member regulatory activities. On

31, 2002 the changes made to Schedule A to the NASD By-Laws in SR-NASD-2002-98. In addition, language that was mistakenly referenced in SR-NASD-2002-98 was corrected.

On October 30, 2002, based on further analysis of trading volumes and feedback from member firms, the rate structure was further adjusted. The TAF was revised as follows: (1) the initial rate of \$0.0001 for covered equity securities was reduced to \$0.00005; (2) the maximum charge on covered equity securities was reduced to \$5.00; (3) the initial rate of \$0.08 for security futures was reduced to \$0.04; and (4) the minimum exclusion was extended to cover options and futures, clarifying that if the execution price for a covered security is less than the TAF rate on a per share, per contract or round turn transaction basis then no fee will be assessed.

NASD is now filing Amendment No. 2 to SR-NASD-2002-147, replacing and completely superseding the original filing and Amendment No. 1. The following is a description of the changes made pursuant to this amendment.

1. NASD is filing the TAF rates established on October 30, 2002, with the Commission and inserting the rate language into NASD By-Laws, Schedule A, Section 2(b)(3). The TAF rates, effective October 1, 2002, are as follows: for each sale of a covered equity security, each member shall pay to NASD \$0.00005 per share, with a maximum charge of \$5 per trade; for each sale of an option, each member shall pay to NASD \$0.002 per contract; and for each round turn transaction of a security future, each member shall pay to NASD \$0.04 per contract. If the execution price for a covered security is less than the TAF rate on a per share, per contract or round turn transaction basis then no fee will be assessed.

The TAF rates were imposed on member firms effective October 1, 2002, but to allow firms more time to complete programming changes, NASD will allow firms to remit to NASD the fees for the preceding quarter on or before January 15, 2003. NASD will analyze the rates on an ongoing basis to ensure recovery of its member regulatory costs. NASD will adjust the TAF rates accordingly if they are inconsistent with NASD's overall intent that its amendments to its pricing structure be revenue neutral and will file such adjustments to the TAF with the SEC as a 19(b)(3)(A) filing.

2. NASD is amending the Section 2 heading on page 5 of the rule filing as follows (new language is underlined and deleted text is bracketed):

January 1, 2003, if SR-NASD-2002-148 has not been approved by the SEC, the TAF as established in SR-NASD-2002-98 will terminate and the member regulatory pricing structure will revert back to Section 8 of Schedule A of the By-Laws as amended, until such time that an approved alternative funding source is in place.

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Section [2] 4 – Fees

The same change should be made to the Section 2 heading on page 16 of Exhibit 1 to the rule filing.

3. SR-NASD-2002-147 contained footnotes regarding the TAF rates (footnote number 4 on page 4 of the rule filing and footnote number 7 on page 11 on Exhibit 1 to the rule filing). NASD has deleted these footnotes and, instead, included information on the TAF rates in the body of the rule filing and Exhibit 1.

4. NASD is amending certain footnotes to include a reference to Notice to Members 02-75. This revision is found in footnote number 3 on page 7 of the rule filing and footnote number 6 on page 17 of Exhibit 1 to the rule filing.

5. NASD is moving the TAF rates from the top of Section 2(b)(3) to the bottom of Section 2(b)(3) to clarify that the TAF rates constitute a footnote.

6. NASD is making minor technical, non-substantive changes to the filing.

Pursuant to Rule 19b-4, enclosed please find the above-referenced amendments. 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 Kathleen A. O’Mara, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8056; e-mail kathleen.omara@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

cc: Joseph P. Morra

File No. SR-NASD-2002-147
Consists of 22 Pages

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 (“Act”),¹ the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to: (1) amend Schedule A of the NASD By-Laws to sunset the Trading Activity Fee (“TAF”) established in SR-NASD-2002-98, terminating on December 31, 2002; and (2) correct language in Section 2 that was mistakenly referenced in SR-NASD-2002-98. NASD is sunsetting the changes made in SR-NASD-2002-98 in response to member comment asserting that a full notice and comment period would be beneficial to NASD members. In addition, NASD would like an opportunity to review the published TAF rates. NASD filed a proposed rule change substantially similar to SR-NASD-2002-98 under Section 19(b)(1) of the Act.²

In this filing, NASD is also amending SR-2002-147 to include the TAF rates (retroactively effective to October 1, 2002, but giving members until January 15, 2003 to remit such fees), correcting the heading of Section 2, deleting footnotes containing TAF rates (because the rate information is now included in the body of the filing), inserting a reference to Notice to Members 02-75 (issued October 30, 2002 and discussing the TAF), and making minor technical, non-substantive changes to the filing. The proposed rule language contained herein replaces and completely supercedes the original filing and Amendment No. 1.

¹ 15 U.S.C. 78s(b)(1).

² See SR-NASD-2002-148.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

Schedule A to the NASD By-Laws

* * * * *

Section 2 – Member [Regulation] Regulatory Fees

(a) Recovery of cost of services. NASD shall, in accordance with this section, collect [M]member [Regulation] regulatory fees that are designed to recover the costs to NASD of the supervision and regulation of members, including performing examinations, processing of membership applications, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. NASD shall periodically review these revenues in conjunction with these costs to determine the applicable rate. NASD shall publish notices of the fees and adjustments to the assessment rates applicable under this section.

(b) Each member shall be assessed a Trading Activity Fee for the sale of covered securities.

(1) Covered Securities. For purposes of the rule, covered securities shall mean:

(i) All exchange registered securities wherever executed (other than bonds, debentures, and other evidence of indebtedness);

(ii) All other equity securities traded otherwise than on an exchange; and

(iii) All security futures wherever executed.

(2) Transactions exempt from the fee. The following shall be exempt from the Trading Activity Fee:

(i) Transactions in securities offered pursuant to an effective registration statement under the Securities Act of 1933 (except transactions in put or call options issued by the Options Clearing Corporation) or offered in accordance with an exemption from registration afforded by Section 3(a) or 3(b) thereof, or a rule thereunder;

(ii) Transactions by an issuer not involving any public offering within the meaning of Section 4(2) of the Securities Act of 1933;

(iii) The purchase or sale of securities pursuant to and in consummation of a tender or exchange offer;

(iv) The purchase or sale of securities upon the exercise of a warrant or right (except a put or call), or upon the conversion of a convertible security; and

(v) Transactions that [which] are executed outside the United States and are not reported, or required to be reported, to a transaction reporting association as defined in Rule 11Aa3-1 and any approved plan filed thereunder.

NASD may exempt other securities and transactions as it deems appropriate.

(3) Fee Rates*

(i) Each member shall pay to NASD a fee per share for each sale of a covered equity security.

(ii) Each member shall pay to NASD a fee per contract for each sale of an option.

(iii) Each member shall pay to NASD a fee for each round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery) of a security future.

* Trading Activity Fee rates are as follows: Each member shall pay to NASD \$0.00005 per share for each sale of a covered equity security, with a maximum charge of \$5 per trade; \$0.002 per contract for each sale of an option; and \$0.04 per contract for each round turn transaction of a security future. In addition, if the execution price for a covered security is less than the Trading Activity Fee rate (\$0.00005 for covered equity securities, \$0.002 for covered option contracts, or \$0.04 for a security future) on a per share, per contract, or round turn transaction basis then no fee will be assessed.

(4) Reporting of Transactions. Members shall report to NASD the aggregate share, contract, and/or round turn volume of sales of covered securities in a manner as prescribed by NASD from time to time.

* * * * *

Section [2] 4 –Fees

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(b) [The] NASD shall assess each member a fee of:

* * * * *

[(3) \$20.00 for each amended Form U-4 or Form U-5 filed by the member with the NASD;]

[(4)](3) \$95.00 for the additional processing of each initial or amended Form U-4 or Form U-5 that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings;

[(5)](4) \$10.00 for each fingerprint card submitted by the member to [the] NASD, plus any other charge that may be imposed by the United States Department of Justice for processing such fingerprint card; and

[(6)](5) \$30.00 annually for each of the member's registered representatives and principals for system processing.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The underlying proposed rule change was approved by NASD's Board of Governors at its meeting on May 23, 2002, which authorized the filing of the rule change with the SEC. It was reviewed by the Small Firm Advisory Board on May 8, 2002. No other action by NASD is necessary for the filing of this proposed rule change. Section 1(a)(ii) of Article VII of the NASD By-Laws permits the NASD Board of Governors to adopt amendments to NASD Rules without recourse to the membership for approval. NASD announced the proposed rule change in Notice to Members 02-75. The TAF, as adopted in SR-NASD-2002-98, will cease to exist after December 31, 2002 pursuant to the sunset provision adopted herein.

(b) Questions regarding this rule filing may be directed to Kathleen A. O'Mara, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD at (202) 728-8056.

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

(a) Purpose

On July 24, 2002, NASD filed SR-NASD-2002-98 that proposed a new member regulatory pricing structure, and subsequently filed an amendment to that filing on August 21, 2002.³ NASD is establishing a sunset provision for the TAF. The TAF established by SR-NASD-2002-98 will cease to exist after December 31, 2002, and the member regulatory pricing structure will revert back to Section 8 of Schedule A of the By-Laws as amended, absent further action. NASD is sunsetting the changes made to the TAF in SR-NASD-2002-98 in response to member comment asserting that a full notice and comment period would be beneficial to NASD members. In addition, NASD would like an opportunity to review its published rates. Further, NASD is amending Schedule A, Section 2 of the By-Laws to correct language that was mistakenly referenced in SR-NASD-2002-98.⁴ In this filing, NASD is also amending SR-2002-

³ Securities Exchange Act Rel. No. 46416 (Aug. 23, 2002); 67 Fed. Reg. 55901 (Aug. 30, 2002) (SR-NASD-2002-98) and Securities Exchange Act Rel. No. 46417 (Aug. 23, 2002), 67 Fed. Reg. 55893 (Aug. 30, 2002) (SR-NASD-2002-99). NASD also published three Notices to Members describing the proposed changes and addressing interpretive questions posed by NASD members. See Notice to Members 02-41 (July 2002), Notice to Members 02-63 (September 2002), and Notice to Members 02-75 (October 30, 2002).

⁴ In its efforts to amend rule language to reflect its corporate restructuring, NASD inadvertently added incorrect rule text. The correct rule language cited herein was approved by the SEC in rule filing SR-NASD-99-43.

147 to include the TAF rates (retroactively effective to October 1, 2002, but allowing members until January 15, 2003 to remit such fees), correct the heading of Section 2, deleting footnotes in the filing regarding the TAF rates and inserting the rate language into the body of the rule filing, inserting a reference to Notice to Members 02-75 (issued October 30, 2002 and discussing the TAF), and making minor technical, non-substantive changes to the filing.

On September 27, 2002, NASD published the initial TAF rates. The TAF rates were as follows:

- \$0.0001 per share for each sale of a covered equity security.
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- \$0.08 per contract for each round turn transaction of a security future.

On October 3, 2002, NASD modified the TAF rates in response to members' comments to incorporate a per trade maximum, retroactively effective to October 1, 2002. The revised TAF rates were modified as follows: for each sale of a covered equity security, each member shall pay to NASD \$0.0001 per share, with a maximum charge of \$10 per trade; for each sale of an option, each member shall pay to NASD \$0.002 per contract; for each round turn transaction of a security future, each member shall pay to NASD \$0.08 per contract. Additionally, if the execution price for a covered equity security is less than the TAF rate (\$0.0001) on a per share basis then no fee will be assessed.

On October 18, 2002, NASD filed two subsequent rule filings with the SEC that are directly related to SR-NASD-2002-98. The first, which is amended by this filing, was a proposed rule change (SR-NASD-2002-147) being filed with the Commission for immediate

effectiveness pursuant to Section 19(b)(3)(A)(iii) of the Act⁵ and Rule 19b-4(f)(3) thereunder.⁶ SR-NASD-2002-147 establishes a sunset provision that terminates on December 31, 2002 the changes made to Schedule A to the NASD By-Laws in SR-NASD-2002-98. In addition, language that was mistakenly referenced in SR-NASD-2002-98 is corrected.

The second rule filing (SR-NASD-2002-148) contains substantially the same rule language as proposed in SR-NASD-2002-98, but is submitted pursuant to Section 19(b)(1) of the Act⁷ to allow for an additional notice and comment period. NASD filed SR-NASD-2002-148 in response to comments made by NASD members that the TAF should not be filed as immediately effective, but instead should be given a full notice and comment period. In addition, this subsequent comment period allows NASD to examine further the impact of the published TAF rates currently in effect and adjust the TAF rates accordingly if they are inconsistent with NASD's overall intent that the amendments to its pricing structure be revenue neutral. SR-NASD-2002-148 is to be read in conjunction with SR-NASD-2002-99. The two separate yet related rule filings are the result of a review of the overall NASD pricing structure and will be used to fund NASD's member regulatory activities. On January 1, 2003, if SR-NASD-2002-148 has not been approved by the SEC, the TAF as established in SR-NASD-2002-98 will terminate and will revert back to Section 8 of Schedule A of the By-Laws as amended, until such time that an approved alternative funding source is in place.

⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

⁶ 17 CFR 240.19b-4(f)(3).

⁷ 15 U.S.C. 78s(b)(1).

On October 30, 2002, based on further analysis of trading volumes and feedback from member firms, the rate structure was further adjusted. The TAF was revised (retroactively effective to October 1, 2002, but allowing members until January 15, 2003 to remit such fees), as follows: (1) the initial rate of \$0.0001 for covered equity securities was reduced to \$0.00005; (2) the maximum charge on covered equity securities was reduced to \$5.00; (3) the initial rate of \$0.08 for security futures was reduced to \$0.04; and (4) the minimum exclusion was extended to cover options and futures, clarifying that if the execution price for a covered security is less than the TAF rate on a per share, per contract or round turn transaction basis then no fee will be assessed.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act,⁸ which requires, among other things, that NASD's rules provide 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.

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.

⁸ 15 U.S.C. 78o-3(b)(5).

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

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.⁹

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 pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁰ and Rule 19b-4(f)(3) thereunder,¹¹ and is concerned solely with the administration of the self-regulatory organization. The TAF, as adopted in SR-NASD-2002-98, will cease to exist after December 31, 2002 pursuant to the sunset provision adopted herein.

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.

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(3).

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

NASD

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

Date: November 7, 2002

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASD-2002-147)

November , 2002

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments Nos. 1 and 2 by National Association of Securities Dealers, Inc. Sunsetting Revisions to NASD By-Laws Regarding the Regulatory Fee and SEC Section 31 Transaction Fee Made in SR-NASD-2002-98

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 NASD. NASD has designated the proposed rule change as administrative under Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(3) thereunder,⁴ 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(3).

I. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

NASD is proposing to: (1) amend Schedule A of the NASD By-Laws to sunset the Trading Activity Fee ("TAF") established in SR-NASD-2002-98, terminating on December 31, 2002; and (2) correct language in Section 2 that was mistakenly referenced in SR-NASD-2002-98. NASD is sunsetting the changes made in SR-NASD-2002-98 in response to member comment asserting that a full notice and comment period would be beneficial to NASD members. In addition, NASD would like an opportunity to review the published TAF rates. NASD also filed a proposed rule change substantially similar to SR-NASD-2002-98 under Section 19(b)(1) of the Act.⁵

In this filing, NASD is also amending SR-2002-147 to include the TAF rates (retroactively effective to October 1, 2002, but giving members until January 15, 2003 to remit such fees), correcting the heading of Section 2, deleting footnotes containing TAF rates (because the rate information is now included in the body of the filing), inserting a reference to a recent Notice to Members that discusses the TAF in appropriate footnotes, and making minor technical, non-substantive changes to the filing. The proposed rule language contained herein replaces and completely supercedes the original filing and Amendment No. 1.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

⁵ See SR-NASD-2002-148.

Schedule A to the NASD By-Laws

* * * * *

Section 2 – Member [Regulation] Regulatory Fees

(a) Recovery of cost of services. NASD shall, in accordance with this section, collect [M]member [Regulation] regulatory fees that are designed to recover the costs to NASD of the supervision and regulation of members, including performing examinations, processing of membership applications, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. NASD shall periodically review these revenues in conjunction with these costs to determine the applicable rate. NASD shall publish notices of the fees and adjustments to the assessment rates applicable under this section.

(b) Each member shall be assessed a Trading Activity Fee for the sale of covered securities.

(1) Covered Securities. For purposes of the rule, covered securities shall mean:

- (i) All exchange registered securities wherever executed (other than bonds, debentures, and other evidence of indebtedness);
- (ii) All other equity securities traded otherwise than on an exchange; and
- (iii) All security futures wherever executed.

(2) Transactions exempt from the fee. The following shall be exempt from the Trading Activity Fee:

- (i) Transactions in securities offered pursuant to an effective registration statement under the Securities Act of 1933 (except transactions in put or call options issued by the Options Clearing Corporation) or offered in accordance with

an exemption from registration afforded by Section 3(a) or 3(b) thereof, or a rule thereunder;

(ii) Transactions by an issuer not involving any public offering within the meaning of Section 4(2) of the Securities Act of 1933;

(iii) The purchase or sale of securities pursuant to and in consummation of a tender or exchange offer;

(iv) The purchase or sale of securities upon the exercise of a warrant or right (except a put or call), or upon the conversion of a convertible security; and

(v) Transactions that [which] are executed outside the United States and are not reported, or required to be reported, to a transaction reporting association as defined in Rule 11Aa3-1 and any approved plan filed thereunder.

NASD may exempt other securities and transactions as it deems appropriate.

(3) Fee Rates*

(i) Each member shall pay to NASD a fee per share for each sale of a covered equity security.

(ii) Each member shall pay to NASD a fee per contract for each sale of an option.

(iii) Each member shall pay to NASD a fee for each round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery) of a security future.

* Trading Activity Fee rates are as follows: Each member shall pay to NASD \$0.00005 per share for each sale of a covered equity security, with a

maximum charge of \$5 per trade; \$0.002 per contract for each sale of an option; and \$0.04 per contract for each round turn transaction of a security future. In addition, if the execution price for a covered security is less than the Trading Activity Fee rate (\$0.00005 for covered equity securities, \$0.002 for covered option contracts, or \$0.04 for a security future) on a per share, per contract, or round turn transaction basis then no fee will be assessed.

(4) Reporting of Transactions. Members shall report to NASD the aggregate share, contract, and/or round turn volume of sales of covered securities in a manner as prescribed by NASD from time to time.

* * * * *

Section [2] 4 –Fees

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(b) [The] NASD shall assess each member a fee of:

* * * * *

[(3) \$20.00 for each amended Form U-4 or Form U-5 filed by the member with the NASD;]

[(4)](3) \$95.00 for the additional processing of each initial or amended Form U-4 or Form U-5 that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings;

[(5)](4) \$10.00 for each fingerprint card submitted by the member to [the] NASD, plus any other charge that may be imposed by the United States Department of Justice for processing such fingerprint card; and

[(6)](5) \$30.00 annually for each of the member's registered representatives and principals for system processing.

* * * * *

II. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE PURPOSE OF, AND STATUTORY BASIS FOR, THE PROPOSED RULE CHANGE

In its filing with the Commission, 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. 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

(1) Purpose

On July 24, 2002, NASD filed SR-NASD-2002-98 that proposed a new member regulatory pricing structure, and subsequently filed an amendment to that filing on August 21, 2002.⁶ NASD is establishing a sunset provision for the TAF. The TAF established by SR-

⁶ Securities Exchange Act Rel. No. 46416 (Aug. 23, 2002); 67 Fed. Reg. 55901 (Aug. 30, 2002) (SR-NASD-2002-98) and Securities Exchange Act Rel. No. 46417 (Aug. 23, 2002), 67 Fed. Reg. 55893 (Aug. 30, 2002) (SR-NASD-2002-99). NASD also published three Notices to Members describing the proposed changes and addressing interpretive questions posed by NASD members. See Notice to Members 02-41 (July 2002), Notice to Members 02-63 (September 2002), and Notice to Members 02-75 (October 30, 2002).

NASD-2002-98 will cease to exist after December 31, 2002, and the member regulatory pricing structure will revert back to Section 8 of Schedule A of the By-Laws as amended, absent further action. NASD is sunsetting the changes made to the TAF in SR-NASD-2002-98 in response to member comment asserting that a full notice and comment period would be beneficial to NASD members. In addition, NASD would like an opportunity to review its published rates. Further, NASD is amending Schedule A, Section 2 of the By-Laws to correct language that was mistakenly referenced in SR-NASD-2002-98.⁷ In this filing, NASD is also amending SR-2002-147 to include the TAF rates (retroactively effective to October 1, 2002, but allowing members until January 15, 2003 to remit such fees), correct the heading of Section 2, deleting footnotes in the filing regarding the TAF rates and inserting the rate language into the body of the rule filing, inserting a reference to Notice to Members 02-75 (issued October 30, 2002 and discussing the TAF), and making minor technical, non-substantive changes to the filing.

On September 27, 2002, NASD announced the initial TAF rates. The TAF rates were as follows:

- \$0.0001 per share for each sale of a covered equity security.
- \$0.002 per contract for each sale of an option.
- \$0.08 per contract for each round turn transaction of a security future.

On October 3, 2002, NASD modified the TAF rates in response to members' comments to incorporate a per trade maximum, retroactively effective to October 1, 2002. The revised TAF

⁷ In its efforts to amend rule language to reflect its corporate restructuring, NASD inadvertently added incorrect rule text. The correct rule language cited herein was approved by the SEC in rule filing SR-NASD-99-43.

rates were modified as follows: for each sale of a covered equity security, each member shall pay to NASD \$0.0001 per share, with a maximum charge of \$10 per trade; for each sale of an option, each member shall pay to NASD \$0.002 per contract; for each round turn transaction of a security future, each member shall pay to NASD \$0.08 per contract. Additionally, if the execution price for a covered equity security is less than the TAF rate (\$0.0001) on a per share basis then no fee will be assessed.

On October 18, 2002, NASD filed two subsequent rule filings with the SEC that are directly related to SR-NASD-2002-98. The first, which is amended by this filing, was a proposed rule change (SR-NASD-2002-147) being filed with the Commission for immediate effectiveness pursuant to Section 19(b)(3)(A)(iii) of the Act⁸ and Rule 19b-4(f)(3) thereunder.⁹ SR-NASD-2002-147 establishes a sunset provision that terminates on December 31, 2002 the changes made to Schedule A to the NASD By-Laws in SR-NASD-2002-98. In addition, language that was mistakenly referenced in SR-NASD-2002-98 is corrected.

The second rule filing (SR-NASD-2002-148) contains substantially the same rule language as proposed in SR-NASD-2002-98, but is submitted pursuant to Section 19(b)(1) of the Act¹⁰ to allow for an additional notice and comment period. NASD filed SR-NASD-2002-148 in response to comments made by NASD members that the TAF should not be filed as immediately effective, but instead should be given a full notice and comment period. In addition, this

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 17 CFR 240.19b-4(f)(3).

¹⁰ 15 U.S.C. 78s(b)(1).

subsequent comment period allows NASD to examine further the impact of the published TAF rates currently in effect and will adjust the TAF rates accordingly if they are inconsistent with NASD's overall intent that the amendments to its pricing structure be revenue neutral. SR-NASD-2002-148 is to be read in conjunction with SR-NASD-2002-99. The two separate yet related rule filings are the result of a review of the overall NASD pricing structure and will be used to fund NASD's member regulatory activities. On January 1, 2003, if SR-NASD-2002-148 has not been approved by the SEC, the TAF as established in SR-NASD-2002-98 will terminate and will revert back to Section 8 of Schedule A of the By-Laws as amended, until such time that an approved alternative funding source is in place.

On October 30, 2002, based on further analysis of trading volumes and feedback from member firms, the rate structure was further adjusted. The TAF was revised (retroactively effective to October 1, 2002, but allowing members until January 15, 2003 to remit such fees), as follows: (1) the initial rate of \$0.0001 for covered equity securities was reduced to \$0.00005; (2) the maximum charge on covered equity securities was reduced to \$5.00; (3) the initial rate of \$0.08 for security futures was reduced to \$0.04; and (4) the minimum exclusion was extended to cover options and futures, clarifying that if the execution price for a covered security is less than the TAF rate on a per share, per contract or round turn transaction basis then no fee will be assessed.

(2) Statutory Basis

NASD believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act,¹¹ which requires, among other things, that NASD's rules provide

¹¹ 15 U.S.C. 78o-3(b)(5).

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.

(B) 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.

(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 administrative under Section 19(b)(3)(A)(iii) of the Act¹² and Rule 19b-4(f)(3) thereunder,¹³ which renders the proposal effective upon receipt of this filing by the Commission. The TAF, as adopted in SR-NASD-2002-98, will cease to exist after December 31, 2002 pursuant to the sunset provision adopted herein.

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.

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(3).

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 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.¹⁴

Jonathan G. Katz
Secretary

¹⁴ 17 CFR 200.30-3(a)(12).