

December 24, 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 - 194 - Proposed Rule Change to Section 5 of Schedule A to the NASD By-Laws

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 Shirley H. Weiss, Office of General Counsel, Regulatory Policy and Oversight, NASD, at (202) 728-8844; e-mail shirley.weiss@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-2003-194
Consists of 13 Pages
December 24, 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") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend Section 5 of Schedule A to the NASD By-Laws ("hereinafter referred to as "Section 5") to clarify that two or more members that are under substantially the same ownership or control (commonly referred to as a "simultaneous filing group" or "SFG") may eliminate certain duplicate fees and assessments and to remind members to provide NASD with prior notice in the format specified by NASD if they wish to establish eligibility for the reduced fees. Pursuant to Section 19(b)(3)(A)(i) of the Act¹ and paragraph (f)(1) of Rule 19b-4 thereunder,² NASD has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposed rule change immediately effective upon filing. Pursuant to Section 19(b)(3)(A)(ii) of the Act³ and paragraph (f)(2) of Rule 19b-4 thereunder,⁴ NASD has also designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change immediately effective upon filing. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

¹ 15 U.S.C. 78s(b)(3)(A)(i).

² 17 CFR 240.19b-4(f)(1).

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

* * * * *

Schedule A to NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of NASD shall be determined on the following basis.

Sections 1 through 4. No change.

Section 5 - Elimination of Duplicate Assessments and Fees

Two or more members under substantially the same ownership or control shall be required to pay (1) only one personnel assessment and one [registration renewal] system processing fee annually for those individuals employed by more than one of the members; [and] (2) only one fee annually for each branch office registered at the same location by more than one of the members[.]; and (3) [There shall be] only one registration fee, one fingerprint processing fee, and one termination fee applicable to each applicant registered or terminated simultaneously with two or more members under substantially the same ownership or control. To establish their eligibility to receive the reduction in fees described herein, members must provide NASD with information as requested by NASD and in the format specified by NASD prior to NASD's assessment of such fees.

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2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by the Board of Governors of NASD ("Board") and authorized for filing with the SEC pursuant to a delegation of authority granted by the Board at its meeting on January 23, 2003, to the General Counsel of NASD Regulatory Policy and Oversight (or his officer designee) to file, without further specific Board authorization,

administrative, technical, conforming, and non-substantive changes to NASD rules ("Delegation of Authority"). Counsel for The Nasdaq Stock Market and NASD Dispute Resolution were provided an opportunity to consult with respect to the general Delegation of Authority, pursuant to the Plan of Allocation and Delegation of Functions by NASD to its Subsidiaries. The proposed rule change was also approved by the Board and authorized for filing with the SEC pursuant to a delegation of authority granted by the Board at its meeting on July 31, 2003, to, among others, the President of Regulatory Services and Operations Division of NASD (or his officer designee) to propose and approve de minimis changes to all fees administered by NASD. The staff will advise the Board of the exercise of discretion to approve de minimis fee changes and the exercise of discretion being taken pursuant to the Delegation of Authority. No other action by NASD is necessary for the filing of the 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. The proposed rule change is effective immediately upon filing.

(b) Questions regarding this rule filing may be directed to Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight Division, at (202) 728-8844.

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

(a) Purpose

Section 5 addresses the elimination of certain duplicate assessments and fees for two or more members under substantially the same ownership or control (commonly referred to as a "simultaneous filing group" or "SFG"). The proposed rule change will amend Section 5 to codify

NASD's stated policies and practices with respect to the availability of these reduced fees to simultaneous filing groups. First, the proposed rule change will change the reference to a "registration renewal fee" to "system processing fee," to conform the terminology to an amendment to Section 5 made in 1999.⁵ Second, the proposed rule change will clarify that, in addition to being able to pay only one system processing fee, a simultaneous filing group, as described in Section 5, may pay only one fingerprint processing fee and one termination fee. Third, the proposed rule change will add language reminding members that, as a procedural matter, they must provide NASD with certain information as requested by NASD and in the format specified by NASD in order to receive the reduced fees prior to NASD's assessment of such fees.

This language will codify existing long-standing practice, which requires members to follow certain procedures to obtain the benefits of NASD's simultaneous filing group program and the reduced registration fees associated therewith, including establishing an simultaneous filing group, notifying NASD staff of the affiliated firms included in the simultaneous filing group, and requesting and completing an SFG Participation Agreement.⁶

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act, which requires, among other things, that NASD rules provide for the equitable allocation of reasonable dues, fees, and other charges among members, issuers and other

⁵ The "registration renewal fee" was replaced with a "system processing fee" in 1999. See Exchange Act Release No. 41937 (Sept. 28, 1999). The reference in Section 5 to "registration renewal fee" should have been, but was not, changed at that time.

persons using any facility or system that NASD operates or controls. NASD believes that the proposed rule change to amend Section 5 will more accurately reflect its long-standing policies and practices with respect to assessing certain reduced fees to simultaneous filing groups that establish their eligibility for such reductions.

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

Not applicable.

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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act⁷ and paragraph (f)(1) of Rule 19b-4 thereunder,⁸ in that the rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of

⁶ NASD is in the process of posting a description of the Simultaneous Form Filing Program on its Web site. In the interim, and thereafter, members may call the Gateway Call Center (301-590-6500) for information about the Program.

⁷ 15 U.S.C. 78s(b)(3)(A)(i).

⁸ 17 CFR 240.19b-4(f)(1).

an existing rule, and Section 19(b)(3)(A)(ii) of the Act⁹ and paragraph (f)(2) of Rule 19b-4 thereunder,¹⁰ in that the proposed rule change establishes or changes a due, fee, or other charge.

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.

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, INC.

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

Date: December 24, 2003

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2003-194)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Elimination of Duplicate Assessments and Fees Contained in Schedule A of the NASD By-Laws

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 December 24, 2003, 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 "establishing or changing a due, fee, or other charge" under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) 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.

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

NASD is proposing to amend Section 5 of Schedule A to the NASD By-Laws ("hereinafter referred to as "Section 5") to clarify that two or more members that are under substantially the same ownership or control (commonly referred to as a "simultaneous filing

¹ 15 U.S.C. § 78s(b)(1).

² 17 CFR § 240.19b-4.

³ 15 U.S.C. § 78s(b)(3)(A)(ii).

⁴ 17 CFR § 240.19b-4(f)(2).

group" or "SFG") may eliminate certain duplicate fees and assessments and to remind members to provide NASD with prior notice in the format specified by NASD if they wish to establish eligibility for the reduced fees. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Schedule A to NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of NASD shall be determined on the following basis.

Sections 1 through 4. No change.

Section 5 - Elimination of Duplicate Assessments and Fees

Two or more members under substantially the same ownership or control shall be required to pay (1) only one personnel assessment and one [registration renewal] system processing fee annually for those individuals employed by more than one of the members; [and] (2) only one fee annually for each branch office registered at the same location by more than one of the members[.]; and (3) [There shall be] only one registration fee, one fingerprint processing fee, and one termination fee applicable to each applicant registered or terminated simultaneously with two or more members under substantially the same ownership or control. To establish their eligibility to receive the reduction in fees described herein, members must provide NASD with information as requested by NASD and in the format specified by NASD prior to NASD's assessment of such fees.

* * * * *

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. 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

(a) Purpose

Section 5 addresses the elimination of certain duplicate assessments and fees for two or more members under substantially the same ownership or control (commonly referred to as a "simultaneous filing group" or "SFG"). The proposed rule change will amend Section 5 to codify NASD's stated policies and practices with respect to the availability of these reduced fees to simultaneous filing groups. First, the proposed rule change will change the reference to a "registration renewal fee" to "system processing fee," to conform the terminology to an amendment to Section 5 made in 1999.⁵ Second, the proposed rule change will clarify that, in addition to being able to pay only one system processing fee, a simultaneous filing group, as described in Section 5, may pay only one fingerprint processing fee and one termination fee. Third, the proposed rule change will add language reminding members that, as a procedural matter, they must provide NASD with certain information as requested by NASD and in the

⁵ The "registration renewal fee" was replaced with a "system processing fee" in 1999. See Exchange Act Release No. 41937 (Sept. 28, 1999). The reference in Section 5 to "registration renewal fee" should have been, but was not, changed at that time.

format specified by NASD in order to receive the reduced fees prior to NASD's assessment of such fees.

This language will codify existing long-standing practice, which requires members to follow certain procedures to obtain the benefits of NASD's simultaneous filing group program and the reduced registration fees associated therewith, including establishing an simultaneous filing group, notifying NASD staff of the affiliated firms included in the simultaneous filing group, and requesting and completing an SFG Participation Agreement.⁶

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act, which requires, among other things, that NASD rules provide for the equitable allocation of reasonable dues, fees, and other charges among members, issuers and other persons using any facility or system that NASD operates or controls. NASD believes that the proposed rule change to amend Section 5 will more accurately reflect its long-standing policies and practices with respect to assessing certain reduced fees to simultaneous filing groups that establish their eligibility for such reductions.

(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.

⁶ NASD is in the process of posting a description of the Simultaneous Form Filing Program on its Web site. In the interim, and thereafter, members may call the Gateway Call Center (301-590-6500) for information about the Program.

(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 Act⁷ and Rule 19b-4(f)(2) thereunder,⁸ 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.

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

⁷ 15 U.S.C. § 78s(b)(3)(A)(ii).

⁸ 17 CFR § 240.19b-4(f)(2).

should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

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