

BY MESSENGER AND FACSIMILE

July 9, 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-2003-109 - Proposed Rule Change to Section 4 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, 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

cc: Elizabeth C. Badawy
Christopher B. Stone

File No. SR-NASD-2003-109
Consists of 14 Pages
July 9, 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 4(b) of Schedule A to the NASD By-Laws (hereinafter referred to as "Section 4(b)") to: (1) increase the \$10.00 charge for each set of fingerprints submitted by a member to NASD for processing to \$13.00; and (2) establish a \$13.00 charge to be paid to NASD for posting each set of fingerprint results processed by another self-regulatory organization ("SRO") on the Central Registration Depository ("CRD" or "Web CRD"). Proposed new language is underlined; 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 3 No change.

Section 4 - Fees

(a) No change.

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

(1) through (3) No change.

(4) [\$10.00] \$13.00 for processing and posting to the CRD system each set of fingerprints [fingerprint card] submitted by the member to NASD, plus any other charge

that may be imposed by the United States Department of Justice for processing [such] each set of fingerprints [card].

(5) \$13.00 for processing and posting to the CRD system each set of fingerprint results and identifying information that have been processed through another self-regulatory organization and submitted by a member to NASD.

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

[(6)] (7) 10% of a member's final annual renewal assessment or \$100, whichever is greater, with a maximum charge of \$5,000, if the member fails timely to pay the amount indicated on its preliminary renewal statement.

(c) through (l) No change.

* * * * *

(a) Not applicable.

(b) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by the Board of Governors of NASD at its meeting on April 24, 2003, which authorized the filing of the proposed rule change with the SEC. 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 will become operative on July 15, 2003.

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

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

(a) Purpose

The purpose of the proposed rule change to Section 4(b) is to (1) increase the \$10.00 charge for each set of fingerprints submitted by a member to NASD for processing to \$13.00; and (2) establish a \$13.00 charge to be paid to NASD for posting each set of fingerprint results and identifying information processed by another SRO on CRD.

NASD currently processes fingerprint cards submitted by member firms on behalf of their associated persons who are required to be fingerprinted pursuant to the Act. Among other things, NASD collects the fingerprint cards, images them, links them to an associated person's CRD record, and forwards them to the Federal Bureau of Investigation ("FBI"). NASD tracks the status of these cards and posts the results of the FBI's fingerprint check on the CRD system.¹ NASD currently charges members \$10.00 for processing each fingerprint card and additionally collects \$22.00 from members on behalf of the FBI as appropriate, consistent with FBI

¹ Generally speaking, results fall into one of three categories: "clear", "criminal history record information", or "illegible" (if the FBI could not "read" the images submitted). "Criminal history record information" ("CHRI") is defined in Section 28 of the Code of Federal Regulations as "information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system." In general terms, CHRI is composed of the results of a fingerprint check on a registered or associated person when information received from the FBI reflects an arrest history.

guidelines.² The \$3.00 increase proposed in the rule change will raise NASD's fingerprint processing fee from \$10.00 to \$13.00 and, when the FBI's \$22.00 fee is included, will raise the total fingerprint processing fee from \$32.00 to \$35.00. The additional \$3.00 charge will help cover NASD costs associated with its fingerprinting program.

The proposed rule change also establishes a new \$13.00 fee to be charged by NASD to members that submit to NASD for posting to the CRD system fingerprint results and identifying information that have been processed through another SRO. Pursuant to Section 17(f)(2) of the Act and Rule 17f-2 thereunder, other SROs may process fingerprint cards for persons required to have their fingerprints processed through the FBI, consistent with fingerprint plans submitted by those SROs to the Commission. NASD currently accepts the results (i.e., the actual disposition/record sent by the FBI) of fingerprints processed through another SRO at no cost to the member. Consistent with Rule 17f-2, members may, under certain enumerated circumstances, submit such results in lieu of submitting fingerprint cards. Upon receipt of the results, NASD staff images and stores the documents received, verifies and matches the fingerprint processing results to an existing CRD record if available, and manually posts the results to the CRD system. In the event that the individual does not already have a CRD record, NASD staff would be required to create a new base record in the CRD system. NASD proposes charging members a \$13.00 fee to perform these activities. Because the FBI would have already processed these fingerprints, the member would have already paid the FBI fee, and NASD would not be charging the additional FBI fee under these circumstances.

² The FBI determines when and on what basis it will charge the \$22.00 fee. For example, the FBI does not charge a fee on the submission of a second card when it identifies both the first and the second card as illegible for a particular individual.

NASD also proposes substituting the term "set of fingerprints" for "fingerprint cards."

This proposed change describes the traditional ink and paper fingerprint cards in current use, but in recognition of the changing technology available for fingerprint processing, would also describe the electronic transmission of fingerprints.

The proposed fingerprint processing fees will be assessed starting on July 15, 2003.

(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's 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 fingerprint processing fees are reasonable and fairly reflect NASD's costs incurred in processing fingerprints and posting each set of fingerprint results and identifying information processed by another SRO on CRD.

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)(ii) of the Act and paragraph (f)(2) of Rule 19b-4 thereunder,³ in that the proposed rule change establishes or changes a due, fee, or other charge. The fee becomes operative on July 15, 2003.

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 Z. Sweeney, Senior Vice President and
Corporate Secretary

Date: July 9, 2003

³ 17 CFR 240.19b-4(f)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2003-109)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Change in Fingerprint Processing 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 , 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 (4)(b) of Schedule A of NASD's By-Laws to: (1) increase the \$10.00 charge for each set of fingerprint images and identifying information submitted by a member to NASD for processing to \$13.00; (2) establish a \$13.00 charge to be

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).

paid to NASD for posting each set of fingerprint results processed by another self-regulatory organization ("SRO") on the Central Registration Depository ("CRD" or "Web CRD"); and (3) substitute the term "fingerprint images and identifying information" for "fingerprint cards." The fees will become operative on July 15, 2003. 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 3 No change.

Section 4 - Fees

(a) No change.

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

(1) through (3) No change.

(4) [\$10.00] \$13.00 for processing and posting to the CRD system each set of fingerprints [fingerprint card] submitted by the member to NASD, plus any other charge that may be imposed by the United States Department of Justice for processing [such] each set of fingerprints [card].

(5) \$13.00 for processing and posting to the CRD system each set of fingerprint results and identifying information that have been processed through another self-regulatory organization and submitted by a member to NASD.

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

[(6)] (7) 10% of a member's final annual renewal assessment or \$100, whichever is greater, with a maximum charge of \$5,000, if the member fails timely to pay the amount indicated on its preliminary renewal statement.

(c) through (l) No change.

* * * * *

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

The purpose of the proposed rule change to Section 4(b) is to (1) increase the \$10.00 charge for each set of fingerprints submitted by a member to NASD for processing to \$13.00; and (2) establish a \$13.00 charge to be paid to NASD for posting each set of fingerprint results and identifying information processed by another SRO on CRD.

NASD currently processes fingerprint cards submitted by member firms on behalf of their associated persons who are required to be fingerprinted pursuant to the Act. Among other things, NASD collects the fingerprint cards, images them, links them to an associated person's CRD

record, and forwards them to the Federal Bureau of Investigation ("FBI"). NASD tracks the status of these cards and posts the results of the FBI's fingerprint check on the CRD system.⁵ NASD currently charges members \$10.00 for processing each fingerprint card and additionally collects \$22.00 from members on behalf of the FBI as appropriate, consistent with FBI guidelines.⁶ The \$3.00 increase proposed in the rule change will raise NASD's fingerprint processing fee from \$10.00 to \$13.00 and, when the FBI's \$22.00 fee is included, will raise the total fingerprint processing fee from \$32.00 to \$35.00. The additional \$3.00 charge will help cover NASD costs associated with its fingerprinting program.

The proposed rule change also establishes a new \$13.00 fee to be charged by NASD to members that submit to NASD for posting to the CRD system fingerprint results and identifying information that have been processed through another SRO. Pursuant to Section 17(f)(2) of the Act and Rule 17f-2 thereunder, other SROs may process fingerprint cards for persons required to have their fingerprints processed through the FBI, consistent with fingerprint plans submitted by those SROs to the Commission. NASD currently accepts the results (i.e., the actual disposition/record sent by the FBI) of fingerprints processed through another SRO at no cost to the member. Consistent with Rule 17f-2, members may, under certain enumerated circumstances,

⁵ Generally speaking, results fall into one of three categories: "clear", "criminal history record information", or "illegible" (if the FBI could not "read" the images submitted). "Criminal history record information" ("CHRI") is defined in Section 28 of the Code of Federal Regulations as "information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system." In general terms, CHRI is composed of the results of a fingerprint check on a registered or associated person when information received from the FBI reflects an arrest history.

⁶ The FBI determines when and on what basis it will charge the \$22.00 fee. For example, the FBI does not charge a fee on the submission of a second card when it identifies both the first and the second card as illegible for a particular individual.

submit such results in lieu of submitting fingerprint cards. Upon receipt of the results, NASD staff images and stores the documents received, verifies and matches the fingerprint processing results to an existing CRD record if available, and manually posts the results to the CRD system. In the event that the individual does not already have a CRD record, NASD staff would be required to create a new base record in the CRD system. NASD proposes charging members a \$13.00 fee to perform these activities. Because the FBI would have already processed these fingerprints, the member would have already paid the FBI fee, and NASD would not be charging the additional FBI fee under these circumstances.

NASD also proposes substituting the term "set of fingerprints" for "fingerprint cards." This proposed change describes the traditional ink and paper fingerprint cards in current use, but in recognition of the changing technology available for fingerprint processing, would also describe the electronic transmission of fingerprints.

The proposed fingerprint processing fees will be assessed starting on July 15, 2003.

(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's 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 fingerprint processing fees are reasonable and fairly reflect NASD's costs incurred in processing fingerprints and posting each set of fingerprint results and identifying information processed by another SRO on CRD.

(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 "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. NASD will implement this rule change on July 15, 2003.

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

⁷ 15 U.S.C. § 78s(b)(3)(A)(ii).

⁸ 17 CFR 240.19b-4(f)(2).

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].

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