

February 12, 2003

Ms. 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-2003-019 - Proposed Rule Change to NASD Interpretive  
Material 2260 (IM-2260)**

Dear Ms. England:

Pursuant to Section 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, NASD Regulatory Policy and Oversight, at (202) 728-8844; e-mail [Shirley.Weiss@nasd.com](mailto: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

cc: Sapna Patel  
Sharon Lawson

Enclosures

File No. SR-NASD-2003-019  
Consists of 20 Pages

**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C.

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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 NASD Interpretive Material 2260 ("IM-2260") regarding rates of reimbursement for expenses incurred in forwarding proxy material, annual reports, information statements, and other material. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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**IM-2260. [Suggested] Approved Rates of Reimbursement**

(a) The [Board of Governors has determined that the] following [suggested] approved rates of reimbursement for expenses incurred in forwarding proxy material, annual reports, information statements and other material [are to be used as a guide by members:] shall be considered reasonable rates of reimbursement. In addition to the charges specified in this schedule, members also are entitled to receive reimbursement for: (1) actual postage costs (including return postage at the lowest available rate); (2) the actual cost of envelopes (provided they are not furnished by the issuer, the trustee, or a person soliciting proxies); and (3) any actual communication expenses (excluding overhead) incurred in receiving voting returns either telephonically or electronically.

**(1) Charges for Initial Proxy and/or Annual Report Mailings**

(A) [60] 40 cents for each set of proxy material, i.e., proxy statement, form of proxy and annual report when mailed as a unit, unless an opposition proxy

statement has been furnished to securities holders, [plus postage,] with a minimum of \$5.00 for all sets mailed;

(B) [20] 15 cents for each copy, plus postage, for annual reports, which are mailed separately from the proxy material pursuant to the instruction of the person soliciting proxies with a minimum of \$3.00 for all sets mailed[. ];

(C) \$1.00 for each set of proxy material, i.e., proxy statement, form of proxy and annual report when mailed as a unit, for a meeting for which an opposition proxy statement has been furnished to security holders, with a minimum of \$5.00 for all sets mailed;

(D) NASD has approved, as fair and reasonable, the following supplemental proxy fees for intermediaries that coordinate multiple nominees: \$20.00 per nominee plus (i) 10 cents for each set of proxy material, with respect to issuers whose shares are held in fewer than 200,000 nominee accounts, or (ii) 5 cents for each set of proxy material, with respect to issuers whose shares are held in at least 200,000 nominee accounts.

## **(2) Charges for Proxy Follow-Up Mailings**

[(A)] 40 cents for each set of follow-up material, plus postage[, when the follow-up material is mailed to all beneficial owners;].

[(B)] 60 cents for each set of follow-up material, plus postage, when the follow-up material is mailed only to beneficial owners who have not responded to the initial mailing.]

**[(3) Surcharge for Proxy Solicitation**

Eighteen and one-half cents for each set of proxy material, i.e., proxy statement, form of proxy and annual report when mailed as a unit, for the period from April 1, 1986 to March 31, 1987 as a surcharge in addition to the appropriate charges specified herein.]

**[(4)] (3) [Additional Fee for Proxy Solicitation] Charge for Providing Beneficial Ownership Information**

Six and one-half cents per [shareholder] name of non-objecting beneficial owner provided to the issuer pursuant to the issuer's request. Where the non-objecting beneficial ownership information is not furnished directly to the issuer by the member, but is furnished through an agent designated by the member, the issuer will be expected to pay the reasonable expenses of the agent in providing such information, in addition to the rate described above. (See SEC Rules 14a-13(b) and 14c-7(b) under the Securities Exchange Act of 1934 and notes thereto.)

Any member that designates an agent for the purpose of furnishing requesting issuers with beneficial ownership information pursuant to SEC Rule 14b-1(c) and thereafter cancels that designation or appoints a new agent for such purpose should promptly inform interested issuers.

**[(5)] (4) Charges for Interim Report, Post Meeting Report and Other Material Mailings**

[30] 15 cents for each copy, plus postage, for interim reports, post meeting reports, or other material with a minimum of \$2.00 for all sets mailed.

**[(6)] (5) Incentive Fees**

An "incentive fee" (as defined below) for proxy material mailings, including the annual report, and 10 cents for interim report mailings, with respect to each account where the member has eliminated the need to send materials in paper format through the mails (such as by including multiple proxy ballots or forms in one envelope with one set of material mailed to the same household, by distributing multiple proxy ballots or forms electronically thereby reducing the sets of material mailed, or by distributing some or all material electronically) shall be: (i) 25 cents with respect to issuers whose shares are held in at least 200,000 nominee accounts; and (ii) 50 cents with respect to issuers whose shares are held in fewer than 200,000 nominee accounts.

[(b) Members may charge for envelopes, provided that they are not furnished by the issuer, the trustee, or a person soliciting proxies.]

[(c)] (b) Members are reminded that Rule 2430 requires that any such charges must be reasonable. Members may request reimbursement of expenses at less than the approved rates; however, no member may seek reimbursement at rates higher than the approved rates or for items or services not specifically listed above without the prior notification to and consent of the person soliciting proxies or the company. [Accordingly, this is a guide and a member may request reimbursement of expenses at other rates after taking into consideration all relevant factors.]

(c) Rule 2260 requires members to forward promptly issuer-supplied annual reports, interim reports, proxy statements and other material to beneficial owners. Members are not required to transmit more than one annual report, interim report, proxy statement or other material to beneficial owners with more than one account (including trust accounts). In addition, member organizations may eliminate multiple transmissions of reports, statements or other

materials to beneficial owners having the same address, provided they comply with applicable SEC rules with respect thereto (see SEC Rule 14b-1 under the Act).

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by the Board of Directors of NASD Regulation, Inc. at its meeting on May 22, 2002, which authorized the filing of the rule change with the Commission. Counsel for The Nasdaq Stock Market, Inc. and NASD Dispute Resolution, Inc. have been provided an opportunity to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by NASD to its Subsidiaries. The NASD Board of Governors had an opportunity to review the proposed rule change at its meeting on May 23, 2002. 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.

(b) Questions regarding this rule filing may be directed to Shirley H. Weiss, Associate General Counsel, NASD Regulatory Policy and Oversight, Office of General Counsel, 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 proposed rule change would amend IM-2260 to adopt the same fee structure recently adopted by the New York Stock Exchange ("NYSE") and the American Stock Exchange ("Amex"), and approved by the Commission, governing the reimbursement of members for costs incurred in forwarding proxy material, annual reports, information statements and other materials. Proposed IM-2260 would also advise members that they may request reimbursement of expenses at less than the approved rates, but that no member may seek reimbursement at rates higher than the approved rates or for items or services not specifically listed without the prior notification to and consent of the person soliciting proxies or the company.

The SEC's proxy rules, Exchange Act Rules 14a-13, 14b-1, and 14b-2, do not specify the fees that nominees can charge issuers for distributing proxy materials; rather, they state that issuers must reimburse nominees for "reasonable expenses" incurred. The Commission approved the NYSE's current fee structure on March 25, 2002,<sup>1</sup> following numerous meetings of the Proxy Voting Review Committee (the "Committee"), a private initiative that was established to review the NYSE's pilot fee program and the proxy process in general.<sup>2</sup> The Commission found that "the

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<sup>1</sup> Exchange Act Rel. No. 45644 (March 25, 2002). The Commission emphasized that permanent approval of the NYSE's pilot program did not end the discussion of proxy fee reform. The Commission urged the NYSE and the Committee to continue discussing proxy fee reform with the eventual goal that the marketplace, rather than self-regulatory organizations, will establish reasonable and competitive proxy reimbursement fees. The Commission also stated that it expected the NYSE to continue to monitor its fees "to ensure they are related to 'reasonable expenses' of the NYSE's member brokers in accordance with the Act, and propose changes where appropriate."

<sup>2</sup> The Committee concluded that the NYSE's Proxy Reimbursement Guidelines, which had been established in a pilot program and approved by the Commission on March 14, 1997, had been instrumental in setting the costs that issuers incurred in having broker-dealers and intermediaries transmit proxy and other materials to security holders at fair and reasonable levels. On that basis, the Committee voted, with NASD abstaining, to seek

Committee's recommended fee reductions [for "large issuers"] were reasonable and should help to alleviate the burden and cost that large issuers currently bear in the proxy distribution process and more fairly allocate the cost among large issuers and small issuers."<sup>3</sup> The Commission concluded that the NYSE's proposed fee changes were reasonable and fairly allocated, did not discriminate among issuers, and did not impose any unnecessary burdens on competition. On June 3, 2002, the Amex amended its proxy reimbursement fees to conform to those of the NYSE.<sup>4</sup>

Proposed IM-2260 will provide members with the same schedule of fees that have been adopted by the NYSE and Amex. Proposed IM-2260 will also permit members to request reimbursement of expenses at less than the rates set forth in IM-2260, but it will require members to notify and obtain consent from the person soliciting proxies or the company for reimbursement at rates higher than the approved rates or for items or services not specifically referenced in IM-2260. The proposed rule also advises members that they are not required to transmit more than one annual report, interim report, proxy statement or other material to beneficial owners with more than one account (including trust accounts), and that they may eliminate multiple transmissions of reports, statements or other materials to beneficial owners having the same address, provided they comply with applicable SEC rules. The proposed rule will continue to provide that a member providing materials under Rule 2260 may not charge for envelopes that are furnished by the issuer, the trustee, or a person soliciting proxies. By conforming its proxy

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permanent approval of the pilot program guidelines, with some modifications to reflect the economies of scale of large issuers, defined by the Committee as companies that have in excess of 200,000 street name shareholders (approximately 200 companies). The Committee voted to reduce the basic mailing fee from 50 cents to 40 cents; increase the suggested per-nominee fee for intermediaries that coordinate the proxy and mailing activities of multiple nominees to \$20.10 per set of material required for "small issuers" and \$20.05 per set of material required for "large issuers"; and reduce from 50 cents to 25 cents the incentive fee for initial mailings of the materials of large issuers.

<sup>3</sup> Id.

<sup>4</sup> Exchange Act Rel. No. 46146 (June 28, 2002).

reimbursement guidelines to those adopted by the NYSE and Amex, NASD is adopting reimbursement rates that the Commission has already determined are reasonable and fairly allocated, do not discriminate among issuers, and do not impose any unnecessary burdens on competition.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change to IM-2260 is designed to accomplish these ends by providing NASD members with rates of reimbursement for expenses incurred in forwarding proxy and other materials that are fair and reasonable and consistent with fees charged by the NYSE and Amex.

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) of the Act and paragraph (f)(6) of Rule 19b-4 thereunder, in that the proposed rule change does not

significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. In accordance with Rule 19b-4(f)(6)(iii), NASD submitted written notice of its intent to file the proposed rule change along with a brief description and text of the proposed rule change prior to the date of filing. In that notice of intent, NASD requested that the Commission waive the requirement that the rule change, by its terms, not become operative for 30 days after the date of the filing as set forth in Rule 19b-4(f)(6)(iii), as consistent with the protection of investors and the public interest. Therefore, the proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change will conform NASD's proxy reimbursement guidelines to those of the NYSE and Amex.

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

BY: \_\_\_\_\_  
Barbara Z. Sweeney  
Senior Vice President  
and Corporate Secretary

Date: February 12, 2003

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2003-019)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASD Relating to an Amendment to NASD Interpretive Material 2260 ("IM-2260")

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on February 12, 2003, 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 constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>2</sup> 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 IM-2260 regarding approved rates of reimbursement for expenses incurred in forwarding proxy material, annual reports, information statements, and other material. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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**IM-2260. [Suggested] Approved Rates of Reimbursement**

(a) The [Board of Governors has determined that the] following [suggested] approved rates of reimbursement for expenses incurred in forwarding proxy material, annual reports, information statements and other material [are to be used as a guide by members:] shall be considered reasonable rates of reimbursement. In addition to the charges specified in this schedule, members also are entitled to receive reimbursement for: (1) actual postage costs (including return postage at the lowest available rate); (2) the actual cost of envelopes (provided they are not furnished by the issuer, the trustee, or a person soliciting proxies); and (3) any actual communication expenses (excluding overhead) incurred in receiving voting returns either telephonically or electronically.

**(1) Charges for Initial Proxy and/or Annual Report Mailings**

(A) [60] 40 cents for each set of proxy material, i.e., proxy statement, form of proxy and annual report when mailed as a unit, unless an opposition proxy statement has been furnished to securities holders, [plus postage,] with a minimum of \$5.00 for all sets mailed;

(B) [20] 15 cents for each copy, plus postage, for annual reports, which are mailed separately from the proxy material pursuant to the instruction of the person soliciting proxies with a minimum of \$3.00 for all sets mailed[.];

(C) \$1.00 for each set of proxy material, i.e., proxy statement, form of proxy and annual report when mailed as a unit, for a meeting for which an

opposition proxy statement has been furnished to security holders, with a minimum of \$5.00 for all sets mailed;

(D) NASD has approved, as fair and reasonable, the following supplemental proxy fees for intermediaries that coordinate multiple nominees: \$20.00 per nominee plus (i) 10 cents for each set of proxy material, with respect to issuers whose shares are held in fewer than 200,000 nominee accounts, or (ii) 5 cents for each set of proxy material, with respect to issuers whose shares are held in at least 200,000 nominee accounts.

**(2) Charges for Proxy Follow-Up Mailings**

[(A) 40 cents for each set of follow-up material, plus postage[, when the follow-up material is mailed to all beneficial owners;].

[(B) 60 cents for each set of follow-up material, plus postage, when the follow-up material is mailed only to beneficial owners who have not responded to the initial mailing.]

**[(3) Surcharge for Proxy Solicitation**

Eighteen and one-half cents for each set of proxy material, i.e., proxy statement, form of proxy and annual report when mailed as a unit, for the period from April 1, 1986 to March 31, 1987 as a surcharge in addition to the appropriate charges specified herein.]

**[(4)] (3) [Additional Fee for Proxy Solicitation] Charge for Providing Beneficial Ownership Information**

Six and one-half cents per [shareholder] name of non-objecting beneficial owner provided to the issuer pursuant to the issuer's request. Where the non-objecting beneficial ownership information is not furnished directly to the issuer by the member, but is furnished through an agent designated by the member, the issuer will be expected to pay the reasonable expenses of the agent in providing such information, in addition to the rate described above. (See SEC Rules 14a-13(b) and 14c-7(b) under the Securities Exchange Act of 1934 and notes thereto.)

Any member that designates an agent for the purpose of furnishing requesting issuers with beneficial ownership information pursuant to SEC Rule 14b-1(c) and thereafter cancels that designation or appoints a new agent for such purpose should promptly inform interested issuers.

**[(5)] (4) Charges for Interim Report, Post Meeting Report and Other Material Mailings**

[30] 15 cents for each copy, plus postage, for interim reports, post meeting reports, or other material with a minimum of \$2.00 for all sets mailed.

**[(6)] (5) Incentive Fees**

An "incentive fee" (as defined below) for proxy material mailings, including the annual report, and 10 cents for interim report mailings, with respect to each account where the member has eliminated the need to send materials in paper format through the

mails (such as by including multiple proxy ballots or forms in one envelope with one set of material mailed to the same household, by distributing multiple proxy ballots or forms electronically thereby reducing the sets of material mailed, or by distributing some or all material electronically) shall be: (i) 25 cents with respect to issuers whose shares are held in at least 200,000 nominee accounts; and (ii) 50 cents with respect to issuers whose shares are held in fewer than 200,000 nominee accounts.

[(b) Members may charge for envelopes, provided that they are not furnished by the issuer, the trustee, or a person soliciting proxies.]

[(c) (b) Members are reminded that Rule 2430 requires that any such charges must be reasonable. Members may request reimbursement of expenses at less than the approved rates; however, no member may seek reimbursement at rates higher than the approved rates or for items or services not specifically listed above without the prior notification to and consent of the person soliciting proxies or the company. [Accordingly, this is a guide and a member may request reimbursement of expenses at other rates after taking into consideration all relevant factors.]

(c) Rule 2260 requires members to forward promptly issuer-supplied annual reports, interim reports, proxy statements and other material to beneficial owners. Members are not required to transmit more than one annual report, interim report, proxy statement or other material to beneficial owners with more than one account (including trust accounts). In addition, member organizations may eliminate multiple transmissions of reports, statements or other materials to beneficial owners having the same address, provided they comply with applicable SEC rules with respect thereto (see SEC Rule 14b-1 under the Act).

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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

(a) Purpose

The proposed rule change would amend IM-2260 to adopt the same fee structure recently adopted by the New York Stock Exchange ("NYSE") and the American Stock Exchange ("Amex") governing the reimbursement of members for costs incurred in forwarding proxy material, annual reports, information statements and other materials. Proposed IM-2260 would also advise members that they may request reimbursement of expenses at less than the rates, but that no member may seek reimbursement at rates higher than the rates or for items or services not specifically listed without the prior notification to and consent of the person soliciting proxies or the company.

The SEC's proxy rules, Exchange Act Rules 14a-13, 14b-1, and 14b-2, do not specify the fees that nominees can charge issuers for distributing proxy materials; rather, they state that issuers must reimburse nominees for "reasonable expenses" incurred. The Commission approved

the NYSE's current fee structure on March 25, 2002,<sup>3</sup> following numerous meetings of the Proxy Voting Review Committee (the "Committee"), a private initiative that was established to review the NYSE's pilot fee program and the proxy process in general.<sup>4</sup> The Commission found that "the Committee's recommended fee reductions [for "large issuers"] were reasonable and should help to alleviate the burden and cost that large issuers currently bear in the proxy distribution process and more fairly allocate the cost among large issuers and small issuers."<sup>5</sup> The Commission concluded that the NYSE's proposed fee changes were reasonable and fairly allocated, did not discriminate among issuers, and did not impose any unnecessary burdens on competition. On June 28, 2002, the American Stock Exchange ("Amex") amended its proxy reimbursement fees to conform to those of the NYSE.<sup>6</sup>

Proposed IM-2260 will provide members with the same schedule of fees that have been adopted by the NYSE and Amex. Proposed IM-2260 will also permit members to request

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<sup>3</sup> Exchange Act Rel. No. 45644 (March 25, 2002). The Commission emphasized that permanent approval of the NYSE's pilot program did not end the discussion of proxy fee reform. The Commission urged the NYSE and the Committee to continue discussing proxy fee reform with the eventual goal that the marketplace, rather than self-regulatory organizations, will establish reasonable and competitive proxy reimbursement fees. The Commission also stated that it expected the NYSE to continue to monitor its fees "to ensure they are related to 'reasonable expenses' of the NYSE's member brokers in accordance with the Act, and propose changes where appropriate."

<sup>4</sup> The Committee concluded that the NYSE's Proxy Reimbursement Guidelines, which had been established in a pilot program and approved by the Commission on March 14, 1997, had been instrumental in setting the costs that issuers incurred in having broker-dealers and intermediaries transmit proxy and other materials to security holders at fair and reasonable levels. On that basis, the Committee voted, with one abstention,<sup>4</sup> to seek permanent approval of the pilot program guidelines, with some modifications to reflect the economies of scale of large issuers, defined by the Committee as companies that have in excess of 200,000 street name shareholders (approximately 200 companies). The Committee voted to reduce the basic mailing fee from 50 cents to 40 cents; increase the suggested per-nominee fee for intermediaries that coordinate the proxy and mailing activities of multiple nominees to \$20.10 per set of material required for "small issuers" and \$20.05 per set of material required for "large issuers"; and reduce from 50 cents to 25 cents the incentive fee for initial mailings of the materials of large issuers.

<sup>5</sup> Id.

reimbursement of expenses at less than the rates set forth in IM-2260, but it will require members to notify and obtain consent from the person soliciting proxies or the company for reimbursement at rates higher than the approved rates or for items or services not specifically referenced in IM-2260. The proposed rule also advises members that they are not required to transmit more than one annual report, interim report, proxy statement or other material to beneficial owners with more than one account (including trust accounts), and that they may eliminate multiple transmissions of reports, statements or other materials to beneficial owners having the same address, provided they comply with applicable SEC rules. The proposed rule will continue to provide that a member providing materials under Rule 2260 may not charge for envelopes that are furnished by the issuer, the trustee, or a person soliciting proxies. By conforming its proxy reimbursement guidelines to those adopted by the NYSE and Amex, NASD is adopting reimbursement rates that the Commission has already determined are reasonable and fairly allocated, do not discriminate among issuers, and do not impose any unnecessary burdens on competition.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change to IM-2260 is designed to accomplish these ends by providing NASD

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<sup>6</sup> Exchange Act Release No. 46146 (June 28, 2002).

members with rates of reimbursement for expenses incurred in forwarding proxy and other materials that are fair and reasonable and consistent with fees charged by the NYSE and Amex.

(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

The proposed rule change has been filed by the Association as a “non-controversial” rule change under Rule 19b-4(f)(6) under the Act.<sup>7</sup> In accordance with Rule 19b-4(f)(6)(iii), prior to the filing date, NASD Regulation submitted written notice of its intent to file the proposed rule change along with a brief description and text of the proposed rule change. In that notice of intent, NASD Regulation requested that the Commission waive the requirement that the rule change, by its terms, not become operative for 30 days after the date of the filing, as consistent with the protection of investors and the public interest. Accordingly, the proposed rule change will become effective upon filing pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

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<sup>7</sup> 17 CFR § 240.19b-4(f)(6)

At any time with 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 the 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, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz  
Secretary