

February 28, 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-2003-26 – Revisions to NASD By-Laws Extending Existing Pilot Program for the Regulatory Fee and the Trading Activity Fee

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 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

File No. SR-NASD-2003-26
Consists of 12 Pages
February 28, 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 (“Act”),¹ the National Association of Securities Dealers, Inc. (“NASD”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to extend the pilot program for the Trading Activity Fee (“TAF”) until April 1, 2003. The TAF pilot program (as originally proposed in SR-NASD-2002-98) is currently in effect and is set to expire on March 1, 2003.² In a separate filing, NASD is requesting the SEC approve SR-NASD-2002-148, granting permanent approval of the TAF, prior to the expiration of the TAF pilot program on April 1, 2003.³ If permanent approval is not granted, the trading fee component of the member regulatory pricing structure will revert back to Section 8 of Schedule A to the NASD By-Laws as amended.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The underlying proposed rule change was approved by the NASD Board of Governors at its meeting on May 23, 2002, which authorized the filing of the rule change with the SEC. It also 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

¹ 15 U.S.C. § 78s(b)(1).

² See Securities Exchange Act Rel. No. 46416 (Aug. 23, 2002), 67 FR 55901 (Aug. 30, 2002) (SR-NASD-2002-98). See also Securities Exchange Act Rel. No. 47112, 68 FR 824 (Jan. 7, 2003) (SR-NASD-2002-182).

³ See Securities Exchange Act Rel. No. 46817 (Nov. 12, 2002), 67 FR 69785 (Nov. 19, 2002)(SR-NASD-2002-148).

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 will announce the proposed rule change in a Notice to Members to be published after filing with the Commission. The TAF pilot program extension will now expire on April 1, 2003.

(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, 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, which proposed a new member regulatory pricing structure including a new Trading Activity Fee ("TAF") to replace the existing trading fee contained in Section 8 of Schedule A to the NASD By Laws.⁴ The proposed rule change was filed with the SEC for immediate effectiveness pursuant to Section 19(b)(3)(A)(ii) of the Securities Exchange Act of 1934⁵ and Rule 19b-4(f)(2) thereunder.⁶ SR-NASD-2002-98 is currently in effect. Assessments under the new TAF were effective as of October 1, 2002, payable January 15, 2003.⁷ On October 18, 2002, NASD established a sunset provision whereby

⁴ Securities Exchange Act Rel. No. 46416 (Aug. 23, 2002), 67 FR 55901 (Aug. 30, 2002) (SR-NASD-2002-98). See also Securities Exchange Act Rel. No. 46417 (Aug. 23, 2002), 67 FR 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 (November 2002).

⁵ 15 U.S.C. § 78s(b)(3)(A)(ii).

⁶ 17 CFR § 240.19b-4(f)(2).

⁷ Member firms were required to pay the TAF in accordance with the pilot program (for the first quarter starting October 1, 2002) by no later than January 15, 2003 and, thereafter, on a monthly basis.

the TAF established by SR-NASD-2002-98 would cease to exist after December 31, 2002.⁸

Upon expiration of SR-NASD-2002-98, the member regulatory pricing structure was to revert back to Section 8 of Schedule A to the NASD By-Laws as amended.

On December 24, 2002, NASD extended the TAF pilot program through March 1, 2003. With this rule filing, NASD is further extending the TAF pilot program through April 1, 2003, which will maintain the status quo, allow additional time for NASD to respond to comments to the original filing, and allow the SEC more time to review issues presented by the proposed permanent TAF rule change filed in SR-NASD-2002-148. NASD is requesting the SEC approve SR-NASD-2002-148, granting permanent approval of the TAF, prior to the expiration of the TAF pilot program on April 1, 2003.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act,⁹ 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 At the same time, NASD filed a new proposed rule change (SR-NASD-2002-148), substantially similar to SR-NASD-2002-98 but filed under Section 19(b)(2) of the Act, to allow for additional member comment.

⁹ 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 on this particular proposed rule change were neither solicited nor received. Written comments, however, have been solicited on SR-NASD-2002-98, SR-NASD-2002-147, SR-NASD-2002-148, and SR-NASD-2002-182. These comments are not addressed herein but are, as appropriate, discussed in connection with the respective rule filings.

6. Extension of Time Period for Commission Action

Not applicable.

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 has been filed by NASD as a “non-controversial” rule change and is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(6) of Rule 19b-4 thereunder,¹⁰ 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. NASD requested that the Commission waive the written notice of its intent to file the proposed rule change set forth in Rule 19b-4(f)(6)(iii). In addition, NASD has requested that the Commission waive the requirement that the rule change not become operative for 30 days after the date of the filing, as set forth in Rule 19b-4(f)(6)(iii), because the TAF rate structure as proposed in SR-NASD-2002-98 is in effect, and NASD does not want it to lapse. Therefore, the proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Exchange Act and Rule 19b-4(f)(6) thereunder. The TAF pilot program will expire on April 1, 2003.

¹⁰ 17 CFR § 240.19b-4(f)(6).

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

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

Date: February 28, 2003

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-

; File No. SR-NASD-2003-26

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Establishing the Regulatory Fee and the Trading Activity Fee as a Pilot Program

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 constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ 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

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),⁴ the National Association of Securities Dealers, Inc. (“NASD”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to

¹ 15 U.S.C. § 78s(b)(1).

² 17 CFR § 240.19b-4.

³ 17 CFR § 240.19b-4.

⁴ 15 U.S.C. § 78s(b)(1).

extend the pilot program for the Trading Activity Fee (“TAF”) until April 1, 2003. The TAF pilot program (as originally proposed in SR-NASD-2002-98) is currently in effect and is set to expire on March 1, 2003.⁵ In a separate filing, NASD is requesting the SEC approve SR-NASD-2002-148, granting permanent approval of the TAF, prior to the expiration of the TAF pilot program on April 1, 2003.⁶ If permanent approval is not granted, the trading fee component of the member regulatory pricing structure will revert back to Section 8 of Schedule A to the NASD By-Laws as amended.

(b) Not applicable.

(c) Not applicable.

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.

⁵ See Securities Exchange Act Rel. No. 46416 (Aug. 23, 2002), 67 FR 55901 (Aug. 30, 2002) (SR-NASD-2002-98). See also Securities Exchange Act Rel. No. 47112, 68 FR 824 (Jan. 7, 2003) (SR-NASD-2002-182).

⁶ See Securities Exchange Act Rel. No. 46817 (Nov. 12, 2002), 67 FR 69785 (Nov. 19, 2002) (SR-NASD-2002-148).

(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, which proposed a new member regulatory pricing structure including a new Trading Activity Fee ("TAF") to replace the existing trading fee contained in Section 8 of Schedule A to the NASD By Laws.⁷ The proposed rule change was filed with the SEC for immediate effectiveness pursuant to Section 19(b)(3)(A)(ii) of the Securities Exchange Act of 1934⁸ and Rule 19b-4(f)(2) thereunder.⁹ SR-NASD-2002-98 is currently in effect. Assessments under the new TAF were effective as of October 1, 2002, payable January 15, 2003.¹⁰ On October 18, 2002, NASD established a sunset provision whereby the TAF established by SR-NASD-2002-98 would cease to exist after December 31, 2002.¹¹ Upon expiration of SR-NASD-2002-98, the member regulatory pricing structure was to revert back to Section 8 of Schedule A to the NASD By-Laws as amended.

On December 24, 2002, NASD extended the TAF pilot program through March 1, 2003. With this rule filing, NASD is further extending the TAF pilot program through April 1, 2003,

⁷ Securities Exchange Act Rel. No. 46416 (Aug. 23, 2002), 67 FR 55901 (Aug. 30, 2002) (SR-NASD-2002-98). See also Securities Exchange Act Rel. No. 46417 (Aug. 23, 2002), 67 FR 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 (November 2002).

⁸ 15 U.S.C. § 78s(b)(3)(A)(ii).

⁹ 17 CFR § 240.19b-4(f)(2).

¹⁰ Member firms were required to pay the TAF in accordance with the pilot program (for the first quarter starting October 1, 2002) by no later than January 15, 2003 and, thereafter, on a monthly basis.

¹¹ At the same time, NASD filed a new proposed rule change (SR-NASD-2002-148), substantially similar to SR-NASD-2002-98 but filed under Section 19(b)(1) of the Act, to allow for additional member comment.

which will maintain the status quo, allow additional time for NASD to respond to comments to the original filing, and allow the SEC more time to review issues presented by the proposed permanent TAF rule change filed in SR-NASD-2002-148. NASD is requesting the SEC approve SR-NASD-2002-148, granting permanent approval of the TAF, prior to the expiration of the TAF pilot program on April 1, 2003.

(2) Statutory Basis

NASD believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act,¹² 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.

(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 on this particular proposed rule change were neither solicited nor received. Written comments, however, have been solicited on SR-NASD-2002-98, SR-NASD-2002-147, SR-NASD-2002-148 and SR-2002-182. These comments are not addressed herein but are, as appropriate, discussed in connection with the respective rule filings.

¹² 15 U.S.C. § 78o-3(b)(5).

III. DATE OF EFFECTIVENESS OF THE PROPOSED RULE CHANGE AND TIMING FOR COMMISSION ACTION

The proposed rule change has been filed by NASD as a “non-controversial” rule change and is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(6) of Rule 19b-4 thereunder,¹³ 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. NASD requested that the Commission waive the written notice of its intent to file the proposed rule change set forth in Rule 19b-4(f)(6)(iii). In addition, NASD has requested that the Commission waive the requirement that the rule change not become operative for 30 days after the date of the filing, as set forth in Rule 19b-4(f)(6)(iii), because the TAF rate structure as proposed in SR-NASD-2002-98 is in effect, and NASD does not want it to lapse. Therefore, the proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Exchange Act and Rule 19b-4(f)(6) thereunder. The TAF pilot program will expire on April 1, 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 rule change that are filed with the Commission, and all written communications relating to the

¹³ 17 CFR § 240.19b-4(f)(6).

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

Margaret H. McFarland
Deputy Secretary

¹⁴ 17 CFR § 200.30-3(a)(12).