

dealers that both would provide market making expertise and liquidity to the Exchange and that have significant customer order flow to send to the Exchange. There are no restrictions or limitations on the price at which the Memberships can be sold. The Exchange would distribute all proceeds received from these sales to holders of Class A Common Stock by way of a dividend.

The ISE believes that the sale of 30 additional CMM Memberships would increase the depth and liquidity of the Exchange's market. It also would provide more broker-dealers with an opportunity to participate on the Exchange. The Exchange has carefully evaluated its system capacity and believes that it has more than sufficient capacity to be able to handle the increased number of CMM Members without any adverse effects. Finally, the Exchange would require that a purchaser of one of these new Memberships that is not already a CMM to meet all Exchange requirements currently applicable to CMM Members.⁴

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act⁶ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 ISE. All submissions should refer to File No. SR-ISE-2002-28 and should be submitted by January 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47060; File No. SR-NASD-2002-112]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by National Association of Securities Dealers, Inc. to Amend NASD Rule 3070 to Require Members to File Copies of Criminal and Civil Complaints and Arbitration Claims With NASD

December 20, 2002.

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 August 15, 2002, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On December 9, 2002, NASD filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend Rule 3070 of its rules to require members promptly to file copies with NASD of certain criminal and civil complaints and arbitration claims against a member or a person associated with a member. Below is the text of the proposed rule change as amended. Proposed new language is in *italics*; proposed deletions are in *brackets*.

3070. Reporting Requirement

(a) through (c) No change.

(d) Nothing contained in [paragraphs (a), (b) and (c) of] this Rule shall eliminate, reduce, or otherwise abrogate the responsibilities of a member or person associated with a member to promptly file with full disclosure, required amendments to Form BD, Forms U-4 and U-5, or other required filings, and to respond to [the Association] *NASD* with respect to any customer complaint, examination, or inquiry.

⁴ The ISE believes that this proposed rule change is similar to a filing by the American Stock Exchange LLC to increase the number of its memberships. See Securities Exchange Act Release No. 45130 (December 5, 2001), 66 FR 64324 (December 12, 2001).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Patrice Gliniecki, Vice President and Deputy General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated December 6, 2002, and enclosures ("Amendment No. 1"). Amendment No. 1 replaced the original rule filing in its entirety.

(e) Any member subject to substantially similar reporting requirements of another self-regulatory organization of which it is a member is exempt from [the provisions] paragraphs (a), (b) and (c) of this Rule.

(f) Each member shall promptly file with NASD copies of:

(1) any indictment, information or other criminal complaint or plea agreement for conduct reportable under paragraph (a)(5) of this Rule;

(2) any complaint in which a member is named as a defendant or respondent in any securities or commodities-related private civil litigation;

(3) any securities or commodities-related arbitration claim filed against a member in any forum other than the NASD Dispute Resolution forum;

(4) any indictment, information or other criminal complaint, any plea agreement, or any private civil complaint or arbitration claim against a person associated with a member that is reportable under question 14 on Form U-4, irrespective of any dollar thresholds Form U-4 imposes for notification, unless, in the case of an arbitration claim, the claim has been filed in the NASD Dispute Resolution forum.

(g) Members shall not be required to comply separately with paragraph (f) in the event that any of the documents required by paragraph (f) have been the subject of a request by NASD's Registration and Disclosure staff, provided that the member produces those requested documents to the Registration and Disclosure staff not later than 30 days after receipt of such request. This paragraph does not supersede any NASD rule or policy that requires production of documents specified in paragraph (f) sooner than 30 days after receipt of a request by the Registration and Disclosure staff.

* * * * *

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

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The proposed rule change would amend NASD Rule 3070 to require members to file promptly with NASD copies of certain criminal and civil complaints and arbitration claims against the member or a person associated with the member. The purpose of the rule proposal is to improve the quality and flow of information to NASD with respect to allegations of broker misconduct, so that NASD can enhance investor protection efforts by promptly taking appropriate regulatory action to address the specific alleged misconduct and to prevent similar or related misconduct in the future.

Specifically, the proposed rule change would require members to file with NASD copies of (1) any criminal complaints filed against the member or plea agreements entered into by the member that are covered by the rule; (2) any securities or commodities-related private civil complaints filed against the member; (3) any arbitration claim against the member (except those claims that have already been filed with NASD Dispute Resolution, in which case NASD obtains copies of such claims directly from NASD Dispute Resolution); and (4) any criminal complaint or plea agreement, private civil complaint or arbitration claim against an associated person that is reportable under question 14 on Form U-4, irrespective of any dollar threshold requirements that question imposes for notification (except those arbitration claims that have already been filed with NASD Dispute Resolution). To avoid duplicative filing, the rule proposal also would provide that members need not separately produce the above-referenced documents if they have already been the subject of a request by NASD's Registration and Disclosure staff. The Registration and Disclosure staff sometimes requests these documents to determine whether members have met Form U-4 and other reporting requirements and whether an associated person is subject to a statutory disqualification. However, the rule proposal would require members to respond not later than 30 days after receiving such a request from NASD's Registration and Disclosure staff and, further, the rule proposal would not supersede any other NASD rule or policy that requires a more prompt response to such a document request.

Rule 3070 currently requires, among other things, that a member report to NASD when it is a defendant or respondent in felony criminal proceedings, certain misdemeanor criminal proceedings, or in certain civil or arbitration actions. As to the latter, Rule 3070(a)(7) requires that a member report to NASD when the member or a person associated with the member is a defendant or respondent in securities or commodities-related civil litigation or arbitration only when the proceeding has been disposed of by a judgment, award or settlement in an amount exceeding either \$15,000 (if the defendant or respondent is an associated person) or \$25,000 (if defendant or respondent is the member). No existing rules require a member routinely to file copies with NASD of complaints filed against it in any legal proceedings.

Similar to Rule 3070, question 14 on Form U-4 requires notice that an associated person has been charged or convicted of a felony or certain misdemeanors. It further requires notice that an associated person has been named as a respondent or defendant in a consumer-initiated arbitration or civil litigation involving a sales practice violation that is pending, resulted in a judgment, settled for \$10,000 or more, or contains a claim for compensatory damages of at least \$5,000. However, Form U-4 does not require that the member or associated person file with NASD as a matter of course a copy of the complaint that initiates such proceedings or any plea agreements to resolve reportable criminal charges. The rule proposal would require a member to file copies of any criminal complaint, plea agreement, private civil complaint or arbitration claim that is reportable under question 14 on Form U-4, irrespective of any dollar threshold requirements that may be specified to trigger reporting on Form U-4 (except those arbitration claims that have already been filed with NASD Dispute Resolution).

NASD believes the rule proposal would enhance its regulatory efforts and investor protection mission. Absent the proposed filing requirements, in many instances, NASD might never learn of the specific allegations unless they are also voluntarily reported to NASD or, pursuant to Rule 3070(a)(2), are the subject of a written customer complaint to the member involving allegations of theft or misappropriation of funds or securities, or of forgery. Regulation will be more effective if NASD obtains the detailed allegations at the time a criminal, civil or arbitration complaint or claim is filed, so that an inquiry, if

warranted, can begin promptly. Moreover, the information can be combined with other sources of regulatory intelligence to identify patterns and trends at the earliest possible stage, thereby deploying resources to high risk areas that better protect investors. With respect to associated persons, it is important to receive copies of complaints and claims reportable under question 14 on Form U-4, even when they fall below specified dollar thresholds, as such matters may also point to trends or otherwise flag conduct where regulatory action might be warranted.

NASD believes the regulatory benefits of the proposed rule change outweigh the additional burden on members to file with NASD copies of the specified documents, and NASD further believes that the rule proposal minimizes that burden in that the rule requires only the filing of those complaints and claims most likely to reveal information to assist its regulatory mission. For example, members would not be required to file private civil litigation complaints or arbitration claims that do not relate to securities or commodities-related conduct. Moreover, the proposal would not require members to file with NASD any arbitration claims that are originally filed in the NASD Dispute Resolution forum. NASD is already incurring the cost to make copies of those claims and will continue to do so under the proposal. The rule proposal further carves out those documents that have already been requested by NASD's Registration and Disclosure staff, provided such documents are produced to Registration and Disclosure within 30 days of the request. As with other complaints and claims that would be required to be filed under the proposal, the Dispute Resolution arbitration claims and the documents requested by NASD's Registration and Disclosure staff would be forwarded after copying to a unit within NASD that will evaluate the allegations in the documents for possible regulatory action.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act⁴, which requires, among other things, that NASD's rules 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 proposal will improve its ability to detect and prevent fraudulent and manipulative conduct

and to develop regulatory responses to problem areas at the earliest possible time.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to file number SR-NASD-2002-112 and should be submitted by January 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02-32733 Filed 12-26-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47056; File No. SR-NASD-2002-176]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. and Renewal on Pilot Basis of NASD Rule 7010(k) Relating to Fees for the Trade Reporting and Compliance Engine (TRACE)

December 19, 2002.

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 13, 2002, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("Commission" or "SEC") 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 filing with 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 NASD Rule 7010(k) relating to fees for the Trade Reporting and Compliance Engine ("TRACE") prior to the expiration of the pilot program for fees on December 28, 2002. NASD is proposing to extend the pilot program for TRACE fees to February 28, 2003 and to modify the pilot effective January 1, 2003. As a result of the proposed rule change, the current fee structure would remain in effect to December 31, 2002. In addition, NASD is proposing technical revisions to Rule 7010(k) to replace references to

⁵ 17 CFR 200.30-(a)(12).

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).

⁴ 15 U.S.C. 78o-3(b)(6).