

December 24, 2002

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-2002-182 – 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, Division of Regulatory Policy and Oversight, NASD, Inc., 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-2002-182
Consists of 29 Pages
December 24, 2002

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”) for 60 days effective December 31, 2002 and expiring March 1, 2003. The TAF structure as originally proposed in SR-NASD-2002-98 (and sunset in SR-NASD-2002-147) is set to expire on December 31, 2002. Upon expiration of SR-NASD-2002-98, the member regulatory pricing structure was to revert back to Section 8 of Schedule A of the By-Laws as amended. However, NASD has determined not to revert to the previous pricing structure established in Section 8 of Schedule A of the NASD By-Laws, but rather to extend the TAF pilot program in order to maintain the status quo and to allow the SEC more time to review issues presented by the proposed TAF rule change.² This rule filing is to be read in conjunction with SR-NASD-2002-99. Together they comprise the NASD’s member regulatory pricing structure.

Below is the text of the rule change. The text below shows amended rule language that would be necessary if SR-NASD-2002-98 were not in place.³ Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

¹ 15 U.S.C. 78s(b)(1).

² In addition, many NASD member firms have already made programming changes to pay in conformity with the TAF fee structure that was effective on October 1, 2002.

³ NASD has produced the language as it appears in the previous filing in order to be consistent. This rule is currently in effect in accordance with SR-NASD-2002-98.

Schedule A to [the] NASD By-Laws

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

* * * * *

Section [8] 2 – Member Regulatory [Transaction] Fees

[(a) NASD fee on cleared transactions. Each member shall be assessed a transaction charge of \$.0625 per 1,000 shares, with a minimum charge per side of \$.025 and a maximum charge per side of \$.46875 for each over-the-counter transaction with another member of the Association reportable through ACT in which the member acts either as an agent or a principal for the purchase and/or sale of equity securities.]

[(b) SEC transaction fee. Each member shall be assessed a SEC transaction fee. The amount shall be determined by the SEC in accordance with Section 31 of the Act.]

(a) Recovery of cost of services. NASD shall, in accordance with this section, collect member regulatory fees that are designed to recover the costs to NASD of the supervision and regulation of members, including performing examinations, processing of membership applications, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. NASD shall periodically review these revenues in conjunction with these costs to determine the applicable rate. NASD shall publish notices of the fees and adjustments to the assessment rates applicable under this section.

(b) Each member shall be assessed a Trading Activity Fee for the sale of covered securities.

(1) Covered Securities. For purposes of the rule, covered securities shall mean:

(i) All exchange registered securities wherever executed (other than bonds, debentures, and other evidence of indebtedness);

(ii) All other equity securities traded otherwise than on an exchange; and

(iii) All security futures wherever executed.

(2) Transactions exempt from the fee. The following shall be exempt from the Trading Activity Fee:

(i) Transactions in securities offered pursuant to an effective registration statement under the Securities Act of 1933 (except transactions in put or call options issued by the Options Clearing Corporation) or offered in accordance with an exemption from registration afforded by Section 3(a) or 3(b) thereof, or a rule thereunder;

(ii) Transactions by an issuer not involving any public offering within the meaning of Section 4(2) of the Securities Act of 1933;

(iii) The purchase or sale of securities pursuant to and in consummation of a tender or exchange offer;

(iv) The purchase or sale of securities upon the exercise of a warrant or right (except a put or call), or upon the conversion of a convertible security; and

(v) Transactions that are executed outside the United States and are not reported, or required to be reported, to a transaction reporting association as defined in Rule 11Aa3-1 and any approved plan filed thereunder.

NASD may exempt other securities and transactions as it deems appropriate.

(3) Fee Rates*

(i) Each member shall pay to NASD a fee per share for each sale of a covered equity security.

(ii) Each member shall pay to NASD a fee per contract for each sale of an option.

(iii) Each member shall pay to NASD a fee for each round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery) of a security future.

* Trading Activity Fee rates are as follows: Each member shall pay to NASD \$0.00005 per share for each sale of a covered equity security, with a maximum charge of \$5 per trade; \$0.002 per contract for each sale of an option; and \$0.04 per contract for each round turn transaction of a security future. In addition, if the execution price for a covered security is less than the Trading Activity Fee rate (\$0.00005 for covered equity securities, \$0.002 for covered option contracts, or \$0.04 for a security future) on a per share, per contract, or round turn transaction basis then no fee will be assessed.

(4) Reporting of Transactions. Members shall report to NASD the aggregate share, contract, and/or round turn volume of sales of covered securities in a manner as prescribed by NASD from time to time.

Section 3 – SEC Transaction Fee

Each member shall be assessed an SEC transaction fee. The amount shall be determined by the SEC in accordance with Section 31 of the Act.

Section [2] 4 – Fees

(a) Each member shall be assessed a fee of \$75.00 for the registration of each branch office, as defined in the By-Laws. Each member shall be assessed an annual fee for each branch office in an amount equal to the lesser of (1) \$75.00 per registered branch, or (2) the product of \$75.00 and the number of registered representatives and registered principals associated with the member at the end of [the Association] NASD's fiscal year.

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

(1) \$85.00 for each initial Form U-4 filed by the member with [the] NASD for the registration of a representative or principal, except that the following discounts shall apply to the filing of Forms U-4 to transfer the registration of representatives or principals in connection with acquisition of all or a part of a member's business by another member:

Number of Registered Personnel Transferred	Discount
1,000--1,999	10%
2,000--2,999	20 <u>%</u>
3,000--3,999	30 <u>%</u>
4,000--4,999	40 <u>%</u>
5,000 and over	50 <u>%</u>

(2) \$40.00 for each initial Form U-5 filed by the member with [the] NASD for the termination of a registered representative or registered principal, plus a late filing fee of \$80.00 if the member fails to file the initial Form U-5 within 30 days after the date of termination;

(3) through (5) No Change.

(c) through (k) No Change.

(l)(1) Unless a specific temporary extension of time has been granted, there shall be imposed upon each member required to file reports, as designated by this paragraph, a fee of \$100 for each day that such report is not timely filed. The fee will be assessed for a period not to exceed 10 business days. Requests for such extension of time must be submitted to [the Association] NASD at least three business days prior to the due date; and

(2) through (3) No Change.

* * * * *

Section [3] 5 – Elimination of Duplicate Assessments and Fees

No Change to rule language.

* * * * *

Section [4] 6 – Assessments and Fees for New Members, Resigning Members and Successor Organizations

(a) The assessment of a firm, which is not a member throughout [the Association] NASD's full calendar year from January 1 to December 31, shall be based upon the number of quarter years of membership. The proration for a new member shall include the quarter year in which the member is admitted to membership. The proration for a member which resigns shall include the quarter year in which the member's letter of resignation is received in [the Association] NASD's Executive Office.

(b) A member [which] that is a successor organization to a previous member or members shall assume the unpaid balance of the assessments of its predecessor or predecessors and its next assessment shall be determined, if applicable, upon the assessment data of its predecessors. Such

successor member shall not be required to re-register branch offices and personnel of predecessor members or pay registration fees therefor. Whether a member is the successor organization to a previous member or members shall be determined by [the Association] NASD upon a consideration of the terms and conditions of the particular merger, consolidation, reorganization, or succession. A member [which] that has simply acquired the personnel and offices of another member under circumstances [which] that do not constitute the member a successor organization shall not be required to assume the unpaid assessments of the other member. Such non-successor member shall be required to re-register the branch offices and personnel acquired from the other member and pay applicable registration fees.

Section [5] 7 – Gross Revenue for Assessment Purposes

No Change to rule language.

Section [6] 8 --Fees for Filing Documents Pursuant to the Corporate Financing Rule

(a) There shall be a fee imposed for the filing of initial documents relating to any offering filed with [the] NASD pursuant to the Corporate Financing Rule equal to \$500 plus .01% of the proposed maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement or included on any other type of offering document (where not filed with the SEC), but shall not exceed \$30,500. The amount of filing fee may be rounded to the nearest dollar.

(b) There shall be an additional fee imposed for the filing of any amendment or other change to the documents initially filed with [the] NASD pursuant to the Corporate Financing Rule equal to .01% of the net increase in the maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement, or any related Rule

462(b) registration statement, or reflected on any Rule 430A prospectus, or included on any other type of offering document. However, the aggregate of all filing fees paid in connection with an SEC registration statement or other type of offering document shall not exceed \$30,500.

Section [7] 9 --Service Charge for Processing Extension of Time Requests

(a) No Change.

(b) The service charge for processing each initial extension of time request and for all subsequent extension of time requests (1) involving the same transaction under Regulation T and/or (2) involving an extension of time previously granted pursuant to Rule 15c3-3(n) shall be \$2.00; provided, however, that the service charge shall be \$1.00 for extension of time requests filed electronically by members using [the Association] NASD's Automated Regulatory Reporting System.

* * * * *

Section [9] 10 – Subscription Charges for Firm Access Query System (FAQS)

No Change to rule language.

Section [10] 11 – Request for Data and Publications

No Change to rule language.

Section [11] 12 – Reserved

No Change to rule language.

* * * * *

Section [12] 13 – Application and Annual Fees for Member Firms with Statutorily Disqualified Individuals

(a) Any member firm seeking to employ or continuing to employ as an associated person any individual who is subject to a disqualification from association with a member as set forth in

Article III, Section 4 of [the Association] NASD's By-Laws shall, upon the filing of an application pursuant to Article III, Section 3, paragraph (d) of [the Association] NASD's By-Laws, pay to [the Association] NASD a fee of \$1,500.00. Any member firm whose application filed pursuant to Article III, Section 3, paragraph (d) of [the Association] NASD's By-Laws results in a full hearing for eligibility in [the Association] NASD pursuant to the Rule 9640 Series, shall pay to [the Association] NASD an additional fee of \$2,500.00.

(b) Any member firm continuing to employ as an associated person any individual subject to disqualification from association with a member as set forth in Article III, Section 4 of [the Association] NASD's By-Laws shall pay annually to [the Association] NASD a fee of \$1,500.00 when such person or individual is classified as a Tier 1 statutorily disqualified individual, and a fee of \$1,000.00 when such person or individual is classified as a Tier 2 statutorily disqualified individual.

Section [13] 14 – Review Charge for Advertisement, Sales Literature, and Other Such Material filed or Submitted

There shall be a review charge for each and every item of advertisement, sales literature, and other such material, whether in printed, video or other form, filed with or submitted to [the Association] NASD, except for items that are filed or submitted in response to a written request from [the Association] NASD's Advertising Regulation Department issued pursuant to the spot check procedures set forth in [the Association] NASD's Rules as follows: (1) for printed material reviewed, \$75.00, plus \$10.00 for each page reviewed in excess of 10 pages; and (2) for video or audio media, \$75.00, plus \$10.00 per minute for each minute of tape reviewed in excess of 10 minutes.

Where a member requests expedited review of material submitted to the Advertising Regulation Department there shall be a review charge of \$500.00 per item plus \$25 for each page reviewed in excess of 10 pages. Expedited review shall be completed within three business days, not including the date the item is received by the Advertising Regulation Department, unless a shorter or longer period is agreed to by the Advertising Regulation Department. The Advertising Regulation Department may, in its sole discretion, refuse requests for expedited review.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The underlying proposed rule change was approved by NASD's 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 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 will become effective on December 31, 2002.

(b) Questions regarding this rule filing may be directed to Kathleen A. O'Mara, Associate General Counsel, Office of General Counsel, Division of Regulatory Policy and Oversight, NASD 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 that proposed a new member regulatory pricing structure.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, 2002.⁷ 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, 2002.⁸ Upon expiration of SR-NASD-2002-98, the member regulatory pricing structure was to revert back to Section 8 of Schedule A of the By-Laws as amended.

NASD has determined not to revert to the previous pricing structure established in Section 8 of Schedule A of the NASD By-Laws, but rather to extend the TAF pilot program in order to maintain the status quo and to allow the SEC more time to review issues presented by

⁴ Securities Exchange Act Rel. No. 46416 (Aug. 23, 2002); 67 Fed. Reg. 55901 (Aug. 30, 2002) (SR-NASD-2002-98). See also Securities Exchange Act Rel. No. 46417 (Aug. 23, 2002), 67 Fed. Reg. 55893 (Aug. 30, 2002) (SR-NASD-2002-99). NASD also published two Notices to Members describing the proposed changes and addressing interpretive questions posed by NASD members. See Notice to Members 02-41 (July 2002) and Notices to Members 02-63 (September 2002).

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁶ 17 CFR 240.19b-4(f)(2).

⁷ Member firms must pay the TAF (for the first quarter starting October 1, 2002) by no later than January 15, 2003.

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)(1) of the Act, to allow for additional member comment. NASD sought SEC approval of SR-NASD-2002-148 with an implementation date of December 31, 2002. To date, this proposed rule filing is still pending with the SEC.

the proposed TAF rule change.⁹ Accordingly, NASD is filing with the Commission a proposed rule change to extend the proposed TAF structure for 60 days as a pilot program effective December 31, 2002 and expiring on March 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,¹⁰ 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.

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 have, however, been solicited on SR-NASD-2002-98, SR-NASD-2002-147 and SR-NASD-2002-148. These comments are not addressed herein but are, as appropriate, discussed in connection with the respective rule filings.

⁹ In addition, many NASD member firms have already made programming changes to pay in conformity with the TAF fee structure that was effective on October 1, 2002.

¹⁰ 15 U.S.C. 78o-3(b)(5).

6. Extension of Time Period for Commission Action

NASD does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.¹¹

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,¹² 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 become effective on December 31, 2002 and will expire on March 1, 2003.

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

Not applicable.

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR § 240.19b-4(f)(6).

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: December 24, 2002

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-

; File No. SR-NASD-2002-182

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

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).

Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to extend the pilot program for the Trading Activity Fee (“TAF”) for 60 days effective December 31, 2002 and expiring March 1, 2003. The TAF structure as originally proposed in SR-NASD-2002-98 (and sunset in SR-NASD-2002-147) is set to expire on December 31, 2002. Upon expiration of SR-NASD-2002-98, the member regulatory pricing structure was to revert back to Section 8 of Schedule A of the By-Laws as amended. However, NASD has determined not to revert to the previous pricing structure established in Section 8 of Schedule A of the NASD By-Laws, but rather to extend the TAF pilot program in order to maintain the status quo and to allow the SEC more time to review issues presented by the proposed TAF rule change.⁵ This rule filing is to be read in conjunction with SR-NASD-2002-99. Together they comprise the NASD’s member regulatory structure.

Below is the text of the rule changes. The text below shows amended rule language that would be necessary if SR-NASD-2002-98 were not in place.⁶ Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

Schedule A to [the] NASD By-Laws

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

* * * * *

⁵ In addition, many NASD member firms have already made programming changes to pay in conformity with the TAF fee structure that was effective on October 1, 2002.

⁶ NASD has produced the language as it appears in the previous filing in order to be consistent. This rule is currently in effect in accordance with SR-NASD-2002-98.

Section [8] 2 – Member Regulatory [Transaction] Fees

[(a) NASD fee on cleared transactions. Each member shall be assessed a transaction charge of \$.0625 per 1,000 shares, with a minimum charge per side of \$.025 and a maximum charge per side of \$.46875 for each over-the-counter transaction with another member of the Association reportable through ACT in which the member acts either as an agent or a principal for the purchase and/or sale of equity securities.]

[(b) SEC transaction fee. Each member shall be assessed a SEC transaction fee. The amount shall be determined by the SEC in accordance with Section 31 of the Act.]

(a) Recovery of cost of services. NASD shall, in accordance with this section, collect member regulatory fees that are designed to recover the costs to NASD of the supervision and regulation of members, including performing examinations, processing of membership applications, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. NASD shall periodically review these revenues in conjunction with these costs to determine the applicable rate. NASD shall publish notices of the fees and adjustments to the assessment rates applicable under this section.

(b) Each member shall be assessed a Trading Activity Fee for the sale of covered securities.

(1) Covered Securities. For purposes of the rule, covered securities shall mean:

(i) All exchange registered securities wherever executed (other than bonds, debentures, and other evidence of indebtedness);

(ii) All other equity securities traded otherwise than on an exchange; and

(iii) All security futures wherever executed.

(2) Transactions exempt from the fee. The following shall be exempt from the Trading Activity Fee:

(i) Transactions in securities offered pursuant to an effective registration statement under the Securities Act of 1933 (except transactions in put or call options issued by the Options Clearing Corporation) or offered in accordance with an exemption from registration afforded by Section 3(a) or 3(b) thereof, or a rule thereunder;

(ii) Transactions by an issuer not involving any public offering within the meaning of Section 4(2) of the Securities Act of 1933;

(iii) The purchase or sale of securities pursuant to and in consummation of a tender or exchange offer;

(iv) The purchase or sale of securities upon the exercise of a warrant or right (except a put or call), or upon the conversion of a convertible security; and

(v) Transactions that are executed outside the United States and are not reported, or required to be reported, to a transaction reporting association as defined in Rule 11Aa3-1 and any approved plan filed thereunder.

NASD may exempt other securities and transactions as it deems appropriate.

(3) Fee Rates*

(i) Each member shall pay to NASD a fee per share for each sale of a covered equity security.

(ii) Each member shall pay to NASD a fee per contract for each sale of an option.

(iii) Each member shall pay to NASD a fee for each round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery) of a security future.

* Trading Activity Fee rates are as follows: Each member shall pay to NASD \$0.00005 per share for each sale of a covered equity security, with a maximum charge of \$5 per trade; \$0.002 per contract for each sale of an option; and \$0.04 per contract for each round turn transaction of a security future. In addition, if the execution price for a covered security is less than the Trading Activity Fee rate (\$0.00005 for covered equity securities, \$0.002 for covered option contracts, or \$0.04 for a security future) on a per share, per contract, or round turn transaction basis then no fee will be assessed.

(4) Reporting of Transactions. Members shall report to NASD the aggregate share, contract, and/or round turn volume of sales of covered securities in a manner as prescribed by NASD from time to time.

Section 3 – SEC Transaction Fee

Each member shall be assessed an SEC transaction fee. The amount shall be determined by the SEC in accordance with Section 31 of the Act.

Section [2] 4 – Fees

(a) Each member shall be assessed a fee of \$75.00 for the registration of each branch office, as defined in the By-Laws. Each member shall be assessed an annual fee for each branch office in an amount equal to the lesser of (1) \$75.00 per registered branch, or (2) the product of

\$75.00 and the number of registered representatives and registered principals associated with the member at the end of [the Association] NASD's fiscal year.

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

(1) \$85.00 for each initial Form U-4 filed by the member with [the] NASD for the registration of a representative or principal, except that the following discounts shall apply to the filing of Forms U-4 to transfer the registration of representatives or principals in connection with acquisition of all or a part of a member's business by another member:

Number of Registered Personnel Transferred	Discount
1,000--1,999	10%
2,000--2,999	20 <u>%</u>
3,000--3,999	30 <u>%</u>
4,000--4,999	40 <u>%</u>
5,000 and over	50 <u>%</u>

(2) \$40.00 for each initial Form U-5 filed by the member with [the] NASD for the termination of a registered representative or registered principal, plus a late filing fee of \$80.00 if the member fails to file the initial Form U-5 within 30 days after the date of termination;

(3) through (5) No Change.

(c) through (k) No Change.

(l)(1) Unless a specific temporary extension of time has been granted, there shall be imposed upon each member required to file reports, as designated by this paragraph, a fee of \$100 for each day that such report is not timely filed. The fee will be assessed for a period not to

exceed 10 business days. Requests for such extension of time must be submitted to [the Association] NASD at least three business days prior to the due date; and

(2) through (3) No Change.

* * * * *

Section [3] 5 – Elimination of Duplicate Assessments and Fees

No Change to rule language.

* * * * *

Section [4] 6 – Assessments and Fees for New Members, Resigning Members and Successor Organizations

(a) The assessment of a firm, which is not a member throughout [the Association] NASD's full calendar year from January 1 to December 31, shall be based upon the number of quarter years of membership. The proration for a new member shall include the quarter year in which the member is admitted to membership. The proration for a member which resigns shall include the quarter year in which the member's letter of resignation is received in [the Association] NASD's Executive Office.

(b) A member [which] that is a successor organization to a previous member or members shall assume the unpaid balance of the assessments of its predecessor or predecessors and its next assessment shall be determined, if applicable, upon the assessment data of its predecessors. Such successor member shall not be required to re-register branch offices and personnel of predecessor members or pay registration fees therefor. Whether a member is the successor organization to a previous member or members shall be determined by [the Association] NASD upon a consideration of the terms and conditions of the particular merger, consolidation, reorganization, or succession. A member [which] that has simply acquired the personnel and offices of another

member under circumstances [which] that do not constitute the member a successor organization shall not be required to assume the unpaid assessments of the other member. Such non-successor member shall be required to re-register the branch offices and personnel acquired from the other member and pay applicable registration fees.

Section [5] 7 – Gross Revenue for Assessment Purposes

No Change to rule language.

Section [6] 8 --Fees for Filing Documents Pursuant to the Corporate Financing Rule

(a) There shall be a fee imposed for the filing of initial documents relating to any offering filed with [the] NASD pursuant to the Corporate Financing Rule equal to \$500 plus .01% of the proposed maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement or included on any other type of offering document (where not filed with the SEC), but shall not exceed \$30,500. The amount of filing fee may be rounded to the nearest dollar.

(b) There shall be an additional fee imposed for the filing of any amendment or other change to the documents initially filed with [the] NASD pursuant to the Corporate Financing Rule equal to .01% of the net increase in the maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement, or any related Rule 462(b) registration statement, or reflected on any Rule 430A prospectus, or included on any other type of offering document. However, the aggregate of all filing fees paid in connection with an SEC registration statement or other type of offering document shall not exceed \$30,500.

Section [7] 9 --Service Charge for Processing Extension of Time Requests

(a) No Change.

(b) The service charge for processing each initial extension of time request and for all subsequent extension of time requests (1) involving the same transaction under Regulation T and/or (2) involving an extension of time previously granted pursuant to Rule 15c3-3(n) shall be \$2.00; provided, however, that the service charge shall be \$1.00 for extension of time requests filed electronically by members using [the Association] NASD's Automated Regulatory Reporting System.

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Section [9] 10 – Subscription Charges for Firm Access Query System (FAQS)

No Change to rule language.

Section [10] 11 – Request for Data and Publications

No Change to rule language.

Section [11] 12 – Reserved

No Change to rule language.

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Section [12] 13 – Application and Annual Fees for Member Firms with Statutorily Disqualified Individuals

(a) Any member firm seeking to employ or continuing to employ as an associated person any individual who is subject to a disqualification from association with a member as set forth in Article III, Section 4 of [the Association] NASD's By-Laws shall, upon the filing of an application pursuant to Article III, Section 3, paragraph (d) of [the Association] NASD's By-Laws, pay to [the Association] NASD a fee of \$1,500.00. Any member firm whose application filed pursuant to Article III, Section 3, paragraph (d) of [the Association] NASD's By-Laws

results in a full hearing for eligibility in [the Association] NASD pursuant to the Rule 9640 Series, shall pay to [the Association] NASD an additional fee of \$2,500.00.

(b) Any member firm continuing to employ as an associated person any individual subject to disqualification from association with a member as set forth in Article III, Section 4 of [the Association] NASD's By-Laws shall pay annually to [the Association] NASD a fee of \$1,500.00 when such person or individual is classified as a Tier 1 statutorily disqualified individual, and a fee of \$1,000.00 when such person or individual is classified as a Tier 2 statutorily disqualified individual.

Section [13] 14 – Review Charge for Advertisement, Sales Literature, and Other Such Material filed or Submitted

There shall be a review charge for each and every item of advertisement, sales literature, and other such material, whether in printed, video or other form, filed with or submitted to [the Association] NASD, except for items that are filed or submitted in response to a written request from [the Association] NASD's Advertising Regulation Department issued pursuant to the spot check procedures set forth in [the Association] NASD's Rules as follows: (1) for printed material reviewed, \$75.00, plus \$10.00 for each page reviewed in excess of 10 pages; and (2) for video or audio media, \$75.00, plus \$10.00 per minute for each minute of tape reviewed in excess of 10 minutes.

Where a member requests expedited review of material submitted to the Advertising Regulation Department there shall be a review charge of \$500.00 per item plus \$25 for each page reviewed in excess of 10 pages. Expedited review shall be completed within three business days, not including the date the item is received by the Advertising Regulation Department, unless a

shorter or longer period is agreed to by the Advertising Regulation Department. The Advertising Regulation Department may, in its sole discretion, refuse requests for expedited review.

* * * * *

(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.

(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 that proposed a new member regulatory pricing structure.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

⁷ Securities Exchange Act Rel. No. 46416 (Aug. 23, 2002); 67 Fed. Reg. 55901 (Aug. 30, 2002) (SR-NASD-2002-98). See also Securities Exchange Act Rel. No. 46417 (Aug. 23, 2002), 67 Fed. Reg. 55893 (Aug. 30, 2002) (SR-NASD-2002-99). NASD also published two Notices to Members describing the proposed changes and addressing interpretive questions posed by NASD members. See Notice to Members 02-41 (July 2002) and Notices to Members 02-63 (September 2002).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

new TAF were effective as of October 1, 2002.¹⁰ 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 of the By-Laws as amended.

NASD has determined not to revert to the previous pricing structure established in Section 8 of Schedule A of the NASD By-Laws, but rather to extend the TAF pilot program in order to maintain the status quo and to allow the SEC more time to review issues presented by the proposed TAF rule change.¹² Accordingly, NASD is filing with the Commission a proposed rule change to extend the proposed TAF structure for 60 days as a pilot program effective December 31, 2002 and expiring on March 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,¹³ 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.

¹⁰ Member firms must pay the TAF (for the first quarter starting October 1, 2002) by no later than January 15, 2003.

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. NASD sought SEC approval of SR-NASD-2002-148 with an implementation date of December 31, 2002. To date, this proposed rule filing is still pending with the SEC.

¹² In addition, many NASD member firms have already made programming changes to pay in conformity with the TAF fee structure that was effective on October 1, 2002.

¹³ 15 U.S.C. 78o-3(b)(5).

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD has produced the language as it appears in the previous filing in order to be consistent. This language is currently in effect as a rule in accordance with SR-NASD-2002-98.

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 have, however, been solicited on SR-NASD-2002-98, SR-NASD-2002-147 and SR-NASD-2002-148. These comments are not addressed herein but are, as appropriate, discussed in connection with the respective rule filings.

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,¹⁴ 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

¹⁴ 17 CFR § 240.19b-4(f)(6).

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 become effective on December 31, 2002 and will expire on March 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 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.¹⁵

Margaret H. McFarland
Deputy Secretary

¹⁵

17 CFR 200.30-3(a)(12).