

October 18, 2002

Ms. Katherine A. England  
Assistant Director  
Division of Market Regulation  
U.S. Securities and Exchange Commission  
450 5<sup>th</sup> Street, N.W.  
Washington, D.C. 20549-1001

**Re: File No. SR-NASD-2002-147 – Sunsetting Revisions to By-Laws Regarding the Regulatory Fee and the Trading Activity Fee Established in SR-NASD-2002-98**

**File No. SR-NASD-2002-148 – Revisions to By-Laws Regarding the Regulatory Fee and the SEC Section 31 Transaction Fee**

Dear Ms. England:

On July 24, 2002, NASD filed a proposed rule change (SR-NASD-2002-98) that made changes to Schedule A to the NASD By-Laws to eliminate the current Regulatory Fee assessed upon its members and to institute a new transaction-based Trading Activity Fee (“TAF”). NASD subsequently filed Amendment No. 1 to that filing on August 21, 2002. The proposed rule change was filed with the Securities and Exchange Commission (“SEC” or “Commission”) for immediate effectiveness pursuant to Section 19(b)(3)(A)(ii) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4(f)(2) thereunder.<sup>2</sup> The proposed rule change (SR-NASD-2002-98) was part of a package of two separate yet related rule filings submitted to the SEC as a result of a review of the overall NASD pricing structure.<sup>3</sup> The SEC published these two proposed rule

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<sup>1</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>3</sup> The other rule filing was a proposed rule change that implemented a simplified three-tiered flat rate for the Gross Income Assessment (“GIA”) and increased the rates assessed to members under the Personnel Assessment (SR-NASD-2002-99). This rule filing was filed under Section 19(b)(1) and is still pending with the SEC.

changes as a package on August 30, 2002 in the Federal Register<sup>4</sup> and received 15 comment letters, including submissions from market participants, national securities exchanges, and trade associations.

NASD today is filing with the SEC two subsequent rule filings that are directly related to SR-NASD-2002-98. The first is a proposed rule change (SR-NASD-2002-147) being filed with the Commission for immediate effectiveness pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>5</sup> and Rule 19b-4(f)(3) thereunder.<sup>6</sup> SR-NASD-2002-147 establishes a sunset provision that terminates on December 31, 2002 the changes made to Schedule A to the NASD By-Laws in SR-NASD-2002-98. In addition, language that was mistakenly referenced in SR-NASD-2002-98 is corrected. The second rule filing (SR-NASD-2002-148) contains substantially the same rule language as proposed in SR-NASD-2002-98, but is submitted pursuant to Section 19(b)(1) of the Act<sup>7</sup> to allow for an additional notice and comment period. NASD is filing SR-NASD-2002-148 in response to comments made by NASD's members that the TAF should not be filed as immediately effective, but instead should be given a full notice and comment period. In addition, this subsequent comment period allows NASD to examine the impact of the published TAF rates currently in effect. NASD will adjust the TAF rates accordingly if they are inconsistent with the NASD's overall intent that its amendments to its pricing structure be revenue neutral. This proposed rule filing is to be read in conjunction with SR-NASD-2002-99. The two separate yet related rule filings are the result of a review of the overall NASD pricing structure and will be used to fund NASD's member regulatory activities.

Pursuant to Rule 19b-4, enclosed please find the above-referenced rule filings. 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.,

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<sup>4</sup> Securities Exchange Act Rel. No. 46416 (Aug. 23, 2002), 67 Fed. Reg. 55901 (Aug. 30, 2002) (SR-NASD-2002-98); Securities Exchange Act Rel. No. 46417 (Aug. 23, 2002), 67 Fed. Reg. 55893 (Aug. 30, 2002) (SR-NASD-2002-99).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>6</sup> 17 CFR 240.19b-4(f)(3).

<sup>7</sup> 15 U.S.C. 78s(b)(1).

Ms. Katherine A. England

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at (202) 728-8056; e-mail [kathleen.omara@nasd.com](mailto: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

cc: Joseph P. Morra

File No. SR-NASD-2002-147  
Consists of 14 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 (“Act”),<sup>1</sup> 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) amend Schedule A of the NASD By-Laws to sunset the Trading Activity Fee (“TAF”) established in SR-NASD-2002-98, terminating on December 31, 2002; and (2) correct language in Section 2 that was mistakenly referenced in SR-NASD-2002-98. NASD is sunsetting the changes made in SR-NASD-2002-98 in response to member comment asserting that a full notice and comment period would be beneficial to NASD members. In addition, NASD would like an opportunity to review the published TAF rates. Today, NASD also is filing a proposed rule change substantially similar to SR-NASD-2002-98 under Section 19(b)(1) of the Act.<sup>2</sup> Below is the text of the corrected rule language. Proposed new language is underlined; proposed deletions are in brackets.

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**Schedule A to the NASD By-Laws**

\* \* \* \* \*

**Section 2—Fees**

\* \* \* \* \*

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

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

<sup>2</sup> See SR-NASD-2002-148.

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[(3)] \$20.00 for each amended Form U-4 or Form U-5 filed by the member with the NASD;]

[(4)](3) \$95.00 for the additional processing of each initial or amended Form U-4 or Form U-5 that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings;

[(5)](4) \$10.00 for each fingerprint card submitted by the member to [the] NASD, plus any other charge that may be imposed by the United States Department of Justice for processing such fingerprint card; and

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

\* \* \* \* \*

(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, as adopted in SR-NASD-2002-98, will cease to exist after December 31, 2002 pursuant to the sunset provision adopted herein.

(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, and subsequently filed an amendment to that filing on August 21, 2002.<sup>3</sup> NASD is establishing a sunset provision for the TAF. The TAF established by SR-NASD-2002-98 will cease to exist after December 31, 2002. NASD is sunsetting the changes made to the TAF in SR-NASD-2002-98 in response to member comment asserting that a full notice and comment period would be beneficial to NASD members. In addition, NASD would like an opportunity to review its published rates.<sup>4</sup> Further, NASD is amending Schedule A,

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<sup>3</sup> Securities Exchange Act Rel. No. 46416 (Aug. 23, 2002); 67 Fed. Reg. 55901 (Aug. 30, 2002) (SR-NASD-2002-98) and 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).

<sup>4</sup> NASD published rates on the TAF to be effective on October 1, 2002. The rates are as follows: for each sale of a covered security, each member shall pay to NASD \$0.0001, with a maximum charge of \$10 per trade; for each sale of an option, each member shall

Section 2 of the By-Laws to correct language that was mistakenly referenced in SR-NASD-2002-98.<sup>5</sup>

Today, NASD also is filing a proposed rule change (SR-NASD-2002-148) substantially similar to SR-NASD-2002-98 under Section 19(b)(1) of the Act.<sup>6</sup> This proposed rule filing is to be read in conjunction with SR-NASD-2002-99 still pending with the SEC. NASD seeks SEC approval of SR-NASD-2002-148 with an implementation date of December 31, 2002. On January 1, 2003, if SR-NASD-2002-148 has not been approved by the SEC, the TAF as established in SR-NASD-2002-98 will terminate and the member regulatory pricing structure will revert back to Section 8 of Schedule A of the By-Laws as amended, until such time that an approved alternative funding source is in place.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act,<sup>7</sup> which requires, among other things, that NASD's rules provide

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pay to NASD \$0.002; for each round turn transaction of a security future, each member shall pay to NASD \$0.08. Additionally, if the execution price for a covered equity security is less than the TAF rate (\$0.0001) on a per share basis then no fee will be assessed. NASD will analyze the rates on an ongoing basis to ensure recovery of its member regulatory costs. In the future, NASD will file a 19(b)(3)(a) filing with the SEC to change the rates as necessary.

<sup>5</sup> In its efforts to amend rule language to reflect its corporate restructuring, NASD inadvertently added incorrect rule text. The correct rule language cited herein was approved by the SEC in rule filing SR-NASD-99-43.

<sup>6</sup> 15 U.S.C. 78s(b)(1).

<sup>7</sup> 15 U.S.C. 78o-3(b)(5).



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 were neither solicited nor received.

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.<sup>8</sup>

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 is effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>9</sup> and Rule 19b-4(f)(3) thereunder,<sup>10</sup> and is concerned solely with the administration of the self-regulatory organization. The TAF, as adopted in SR-NASD-2002-98, will cease to exist after December 31, 2002 pursuant to the sunset provision adopted herein.

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<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(3).

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: October 18, 2002

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-NASD-2002-147)

October , 2002

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Sunsetting Revisions to NASD By-Laws Regarding the Regulatory Fee and SEC Section 31 Transaction Fee Made in SR-NASD-2002-98

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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 administrative under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(3) thereunder,<sup>4</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

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(3).

NASD is proposing to: (1) amend Schedule A of the NASD By-Laws to sunset the Trading Activity Fee (“TAF”) established in SR-NASD-2002-98, terminating on December 31, 2002; and (2) correct language in Section 2 that was mistakenly referenced in SR-NASD-2002-98. NASD is sunsetting the changes made in SR-NASD-2002-98 in response to member comment asserting that a full notice and comment period would be beneficial to NASD members. In addition, NASD would like an opportunity to review the published TAF rates. Today, NASD also is filing a proposed rule change substantially similar to SR-NASD-2002-98 under Section 19(b)(1) of the Act.<sup>5</sup> Below is the text of the corrected rule language. Proposed new language is underlined; proposed deletions are in brackets.

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#### **Schedule A to the NASD By-Laws**

\* \* \* \* \*

#### **Section 2—Fees**

\* \* \* \* \*

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

\* \* \* \* \*

[(3) \$20.00 for each amended Form U-4 or Form U-5 filed by the member with the NASD;]

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<sup>5</sup> See SR-NASD-2002-148.

[(4)](3) \$95.00 for the additional processing of each initial or amended Form U-4 or Form U-5 that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings;

[(5)](4) \$10.00 for each fingerprint card submitted by the member to [the] NASD, plus any other charge that may be imposed by the United States Department of Justice for processing such fingerprint card; and

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

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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

#### (1) Purpose

On July 24, 2002, NASD filed SR-NASD-2002-98 that proposed a new member regulatory pricing structure, and subsequently filed an amendment to that filing on August 21,

2002.<sup>6</sup> NASD is establishing a sunset provision for the TAF. The TAF established by SR-NASD-2002-98 will cease to exist after December 31, 2002. NASD is sunsetting the changes made to the TAF in SR-NASD-2002-98 in response to member comment asserting that a full notice and comment period would be beneficial to NASD members. In addition, NASD would like an opportunity to review its published rates.<sup>7</sup> Further, NASD is amending Schedule A, Section 2 of the By-Laws to correct language that was mistakenly referenced in SR-NASD-2002-98.<sup>8</sup>

Today, NASD also is filing a proposed rule change (SR-NASD-2002-148) substantially similar to SR-NASD-2002-98 under Section 19(b)(1) of the Act.<sup>9</sup> This proposed rule filing is to

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<sup>6</sup> Securities Exchange Act Rel. No. 46416 (Aug. 23, 2002); 67 Fed. Reg. 55901 (Aug. 30, 2002) (SR-NASD-2002-98) and 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).

<sup>7</sup> NASD published rates on the TAF to be effective on October 1, 2002. The rates are as follows: for each sale of a covered security, each member shall pay to NASD \$0.0001, with a maximum charge of \$10 per trade; for each sale of an option, each member shall pay to NASD \$0.002; for each round turn transaction of a security future, each member shall pay to NASD \$0.08. Additionally, if the execution price for a covered equity security is less than the TAF rate (\$0.0001) on a per share basis then no fee will be assessed. NASD will analyze the rates on an ongoing basis to ensure recovery of its member regulatory costs. In the future, NASD will file a 19(b)(3)(a) filing with the SEC to change the rates as necessary.

<sup>8</sup> In its efforts to amend rule language to reflect its corporate restructuring, NASD inadvertently added incorrect rule text. The correct rule language cited herein was approved by SEC in rule filing SR-NASD-99-43.

<sup>9</sup> 15 U.S.C. 78s(b)(1).

be read in conjunction with SR-NASD-2002-99 still pending with the SEC. NASD seeks SEC approval of SR-NASD-2002-148 with an implementation date of December 31, 2002. On January 1, 2003, if SR-NASD-2002-148 has not been approved by the SEC, the TAF as established in SR-NASD-2002-98 will terminate and the member regulatory pricing structure will revert back to Section 8 of Schedule A of the By-Laws as amended, until such time that an approved alternative funding source is in place.

(2) Statutory Basis

NASD believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act,<sup>10</sup> 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 were neither solicited nor received.

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<sup>10</sup> 15 U.S.C. 78o-3(b)(5).

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

NASD has designated the proposed rule change as administrative under Section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and Rule 19b-4(f)(3) thereunder,<sup>12</sup> which renders the proposal effective upon receipt of this filing by the Commission. The TAF, as adopted in SR-NASD-2002-98, will cease to exist after December 31, 2002 pursuant to the sunset provision adopted herein.

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

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(3).



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.<sup>13</sup>

Jonathan G. Katz  
Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).