

Proposed Rule Change by National Association of Securities Dealers  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input type="checkbox"/>	Section 19(b)(3)(A) <input checked="" type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
			Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
Provide a brief description of the proposed rule change (limit 250 characters).

To amend Section 7 of Schedule A to the NASD By-Laws to adjust fees for filing documents pursuant to the Corporate financing Rule

**Contact Information**  
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name	<input type="text" value="Shirley"/>	Last Name	<input type="text" value="Weiss"/>
Title	<input type="text" value="Associate General Counsel"/>		
E-mail	<input type="text" value="shirley.weiss@nasd.com"/>		
Telephone	<input type="text" value="(202) 728-8844"/>	Fax	<input type="text" value="(202) 728-8264"/>

**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date	<input type="text" value="12/03/2004"/>
By	<input type="text" value="Marc Menchel"/>
	(Name)
	<input type="text" value="Executive Vice President and General Counsel"/>
	(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**1. Text of Proposed Rule Change**

(a) Pursuant to the provisions of Section 19(b)(3) of the Securities Exchange Act of 1934 ("Act"), the National Association of Securities Dealers, Inc. ("NASD") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend Section 7 of Schedule A to the NASD By-Laws ("Section 7") to adjust fees for filing documents pursuant to Rule 2710 (Corporate Financing Rule – Underwriting Terms and Arrangements). Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

\* \* \* \* \*

**SCHEDULE A TO NASD BY-LAWS**

\* \* \* \* \*

**Section 7 -- 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 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~~] \$75,500. 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 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~~] \$75,500.

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

The proposed rule change was approved by the Board of Governors of NASD, Inc. on November 18, 2004, which authorized the filing of the rule change with the SEC. No other action by NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of the NASD By-Laws permits the Board of Governors of NASD to adopt NASD Rules without recourse to the membership for approval.

The implementation date of the proposed rule change will be January 1, 2005. NASD will announce the implementation date of the proposed rule change in a Notice to Members to be published no later than 30 days following Commission notice of filing of the proposed rule change for immediate effectiveness.

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

(a) Purpose

The purpose of the proposed rule change is to amend Section 7 to raise the maximum fee that may be charged for the filing of initial documents and amendments pursuant to the Corporate Financing Rule from \$30,500 to \$75,500. NASD's Corporate Financing Department (the "Department") is responsible for reviewing the proposed

underwriting terms and arrangements of proposed public offerings of securities for compliance with the requirements of Rule 2710. The purpose of the Department's review is to provide members with, among other things, regulatory guidance as to what constitutes fair and reasonable underwriting terms and arrangements. Pursuant to Rule 2710, the managing underwriter of the offering is required to file certain documentation with the Department for review.

Under Section 7, the current fee for filings pursuant to Rule 2710 is equal to \$500 plus .01 percent 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. Thus, under Section 7, fees are currently capped with respect to offerings with an aggregate offering price of \$300 million or more.

A recent review of the corporate financing fees shows that the current fee structure is wholly out of date. The current fee structure was structured in 1989 to capture the maximum \$30,500 fee on 90 percent of the public offerings filed with the Department. In 2004, because of the general increase in the size of public offerings, NASD is charging the maximum fee on only 75 percent of these filings. Accordingly, the staff is proposing to raise the current cap from .01 percent of \$300 million (\$30,500, including the \$500 minimum flat fee) to .01 percent of \$750 million (\$75,500, including the \$500 minimum flat fee) to again enable NASD to charge the maximum fee on approximately 90 percent of the public offerings filed with the Department. The proposed increase, which raises only the cap and not the rate imposed for the review of documents by the Department, would be equitably allocated among members

underwriting the largest public offerings.

The staff proposes that the fee change will be implemented on January 1, 2005.<sup>1</sup> The staff plans to conduct an annual review of costs and adjust the corporate financing fee, if necessary, as of January 1 each year after appropriate consultation with the Board and rule filings with the Commission. NASD will announce the implementation date of the proposed rule change in a Notice to Members to be published no later than 30 days following Commission notice of filing of the proposed rule change for immediate effectiveness.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act, which requires, among other things, that NASD 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. NASD believes that the rule change is consistent with Section 15A(b)(5) of the Act in that the proposed fees are reasonable based on the general increase in the size of public offerings and are equitably allocated among members submitting proposed public offerings of securities to the Department for compliance with the requirements of

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<sup>1</sup> New filings received and accepted by the Department through its electronic filing system (COBRA) by 12:00 p.m., Eastern Time, on Thursday, December 30, 2004, will be processed under the current fee structure (\$30,500 maximum fee). New filings that have been rejected will be processed under the current fee structure if corrected, re-submitted, and accepted by the Department by the December 30, 2004 deadline.

COBRADesk will be shut down and unavailable for filings on Thursday, December 30, 2004, at 12:00 p.m., Eastern Time, to update COBRA and COBRADesk to accept the proposed new filing fee. COBRADesk will again be available to accept filings on Monday, January 3, 2005, at 8 a.m., Eastern Time. COBRA will shut down at 6:00 p.m., Eastern Time, on Thursday, December 30, 2004, to permit the Department to test the system on Friday, December 31, 2004. The Department

Rule 2710.

**4. Self-Regulatory Organization's Statement on Burden on Competition**

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor received.

**6. Extension of Time Period for Commission Action**

Not applicable.

**7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

The proposed rule change is effective upon filing pursuant to Section 19(b)(3) of the Act and paragraph (f)(2) of Rule 19b-4 thereunder, in that the proposed rule change establishes or changes a due, fee or other charge applicable only to a member.

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

Not applicable.

**9. Exhibits**

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

**EXHIBIT 1**

**SECURITIES AND EXCHANGE COMMISSION**

(Release No. 34- ; File No. SR-NASD-2004-177)

**SELF-REGULATORY ORGANIZATIONS**

Proposed Rule Change by National Association of Securities Dealers, Inc.  
Relating to Fees for Filing Documents Pursuant to Rule 2710 (Corporate Financing Rule  
-- Underwriting Terms and Arrangements)

Pursuant to Section 19(b)(3) 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 "establishing or changing a due, fee or other charge" under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) 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**

NASD is proposing to amend Section 7 of Schedule A to the NASD By-Laws ("Section 7") to adjust fees for filing documents pursuant to Rule 2710 (Corporate

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

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

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

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

Financing Rule -- Underwriting Terms and Arrangements). Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

\* \* \* \* \*

**SCHEDULE A TO NASD BY-LAWS**

\* \* \* \* \*

**Section 7 -- 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 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~~ \$75,500]. 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 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~~ \$75,500].

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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

The purpose of the proposed rule change is to amend Section 7 to raise the maximum fee that may be charged for the filing of initial documents and amendments pursuant to the Corporate Financing Rule from \$30,500 to \$75,500. NASD's Corporate Financing Department (the "Department") is responsible for reviewing the proposed underwriting terms and arrangements of proposed public offerings of securities for compliance with the requirements of Rule 2710. The purpose of the Department's review is to provide members with, among other things, regulatory guidance as to what constitutes fair and reasonable underwriting terms and arrangements. Pursuant to Rule 2710, the managing underwriter of the offering is required to file certain documentation with the Department for review.

Under Section 7, the current fee for filings pursuant to Rule 2710 is equal to \$500 plus .01 percent 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. Thus, under Section 7, fees are currently capped with respect to offerings with an aggregate offering price of \$300 million or more.

A recent review of the corporate financing fees shows that the current fee structure is wholly out of date. The current fee structure was structured in 1989 to capture the maximum \$30,500 fee on 90 percent of the public offerings filed with the Department. In 2004, because of the general increase in the size of public offerings, NASD is charging the maximum fee on only 75 percent of these filings. Accordingly, the staff is proposing to raise the current cap from .01 percent of \$300 million (\$30,500, including the \$500 minimum flat fee) to .01 percent of \$750 million (\$75,500, including the \$500 minimum flat fee) to again enable NASD to charge the maximum fee on approximately 90 percent of the public offerings filed with the Department. The proposed increase, which raises only the cap and not the rate imposed for the review of documents by the Department, would be equitably allocated among members underwriting the largest public offerings.

The staff proposes that the fee change will be implemented on January 1, 2005.<sup>5</sup> The staff plans to conduct an annual review of costs and adjust the corporate financing fee, if necessary, as of January 1 each year after appropriate consultation with the Board and rule filings with the Commission. NASD will announce the implementation date of

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<sup>5</sup> New filings received and accepted by the Department through its electronic filing system (COBRA) by 12:00 p.m., Eastern Time, on Thursday, December 30, 2004, will be processed under the current fee structure (\$30,500 maximum fee). New filings that have been rejected will be processed under the current fee structure if corrected, re-submitted, and accepted by the Department by the December 30, 2004 deadline.

COBRADesk will be shut down and unavailable for filings on Thursday, December 30, 2004, at 12:00 p.m., Eastern Time, to update COBRA and COBRADesk to accept the proposed new filing fee. COBRADesk will again be available to accept filings on Monday, January 3, 2005, at 8 a.m., Eastern Time. COBRA will shut down at 6:00 p.m., Eastern Time, on Thursday, December 30, 2004, to permit the Department to test the system on Friday, December 31, 2004. The Department expects that COBRA will be accessible on Saturday, January 1, 2005. NASD will notify NASD users of system availability on the NASD Web site beginning on December 1, 2004.

the proposed rule change in a Notice to Members to be published no later than 30 days following Commission notice of filing of the proposed rule change for immediate effectiveness.

2. **Statutory Basis**

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act, which requires, among other things, that NASD 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. NASD believes that the rule change is consistent with Section 15A(b)(5) of the Act in that the proposed fees are reasonable based on the general increase in the size of public offerings and are equitably allocated among members submitting proposed public offerings of securities to the Department for compliance with the requirements of Rule 2710.

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

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(2) of Rule 19b-4 thereunder. At any time within 60 days of

the filing of the proposed rule change, the Commission may summarily abrogate such rule change 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, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2004-177 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2004-177. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR-NASD-2004-177 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

Secretary

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<sup>6</sup> 17 CFR 200.30-3(a)(12).