

OMB APPROVAL

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Page 1 of 14

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2004 - 179

Amendment No.

Proposed Rule Change by National Association of Securities Dealers

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial ☒	Amendment ☐	Withdrawal ☐	Section 19(b)(2) ☐	Section 19(b)(3)(A) ☒	Section 19(b)(3)(B) ☐
			Rule		
			☐ 19b-4(f)(1) ☐ 19b-4(f)(4)		
			☒ 19b-4(f)(2) ☐ 19b-4(f)(5)		
			☐ 19b-4(f)(3) ☐ 19b-4(f)(6)		

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the proposed rule change (limit 250 characters).

To amend Section 13 of Schedule A to the NASD by-Laws to adjust the review charge for advertisement, sales literature, and other such materials filed with or submitted to NASD.

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 Last Name
Title
E-mail
Telephone Fax

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 By
(Name)

(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.

STEPHANIE DUMONT,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS 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

Add

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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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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 Sent As Paper Document

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Exhibit 3 - Form, Report, or Questionnaire

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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 Sent As Paper Document

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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 13 of Schedule A to the NASD By-Laws ("Section 13") governing the review charges for advertisements, sales literature, and other such material filed with or submitted to NASD's Advertising Regulation Department (the "Department"). 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 13 -- 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 NASD, except for items that are filed or submitted in response to a written request from NASD's Advertising Regulation Department issued pursuant to the spot check procedures set forth in NASD's Rules as follows: (1) for printed material reviewed, [\$75.00] \$100.00, plus \$10.00 for each page reviewed in excess of 10 pages; and (2) for video or audio media, [\$75.00] \$100.00, 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

The proposed rule change has been approved by the Board of Governors of NASD ("Board") and authorized for filing with the SEC pursuant to a delegation of authority granted by the Board at its meeting on July 31, 2003 to, among others, the President of Regulatory Policy and Oversight Division of NASD to propose and approve de minimis changes to all fees administered by NASD ("Delegation of Authority"). The staff will advise the Board of the exercise of discretion to approve de minimis fee changes and the exercise of discretion being taken pursuant to the Delegation of Authority. Counsel for The Nasdaq Stock Market and NASD Dispute Resolution were provided an opportunity to consult with respect to the general Delegation of Authority, pursuant to the Plan of Allocation and Delegation of Functions by NASD to its Subsidiaries. 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 NASD Board

of Governors to adopt amendments to NASD Rules without recourse to the membership for approval. The proposed rule change is effective immediately upon filing, and NASD proposes to make the implementation date 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 Department is responsible for ensuring that all NASD member firms' communications with the public are fair, balanced, and not misleading. The mission of the Department, as provided in Rule 2210 and the Interpretations issued thereunder, is to ensure that all member communications with the public, including advertisements, sales literature, and correspondence, are based on principles of fair dealing and good faith, are fair and balanced, and provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. Among other things, the Department reviews member communications with the public for false, exaggerated, unwarranted, misleading statements or claims, and exaggerated or unwarranted claims, opinions or forecasts.

The purpose of the proposed rule change is to amend Section 13 to raise the fee that may be charged by the Department for reviewing each and every item of advertisement, sales literature, and other such material, whether in printed, video or other form, filed with or submitted to NASD (except for items that are filed or submitted in

response to a written request from the Department issued pursuant to the spot check procedures set forth in NASD's Rules).

Despite annual cost increases, NASD has not adjusted the charge to members for submitting advertisements, sales literature, and other such material to the Department since 1999. A recent analysis of the Department's operating and technology costs showed that NASD's costs have increased significantly due to increased responsibilities, economic conditions and the need for enhanced technology. Based on this review, NASD proposes to raise the fee charged for the review of printed material and video or audio media from \$75.00 to \$100.00 to offset these cost increases.

The staff proposes that the rate change will go into effect on 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 for immediate effectiveness of the proposed rule change.

(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 review charge is reasonable based on NASD's costs and equitably allocated among all members that file or submit advertisements, sales literature, and other such material, whether in printed, video or other form.

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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-2004-179)

SELF-REGULATORY ORGANIZATIONS

Proposed Rule Change by National Association of Securities Dealers, Inc.

Relating to Amendments to Section 13 of Schedule A to the NASD By-Laws (Review Charge for Advertisement, Sales Literature, and Other Such Material Filed With or Submitted to NASD)

Pursuant to Section 19(b)(3) 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 "establishing or changing a due, fee or other charge" under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(3).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

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

NASD is proposing to amend Section 13 of Schedule A to the NASD By-Laws ("Section 13") governing the review charges for advertisements, sales literature, and other such material filed with or submitted to NASD's Advertising Regulation Department (the "Department"). 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 13 -- 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 NASD, except for items that are filed or submitted in response to a written request from NASD's Advertising Regulation Department issued pursuant to the spot check procedures set forth in NASD's Rules as follows: (1) for printed material reviewed, [\$75.00] \$100.00, plus \$10.00 for each page reviewed in excess of 10 pages; and (2) for video or audio media, [\$75.00] \$100.00, 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.

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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 Department is responsible for ensuring that all NASD member firms' communications with the public are fair, balanced, and not misleading. The mission of the Department, as provided in Rule 2210 and the Interpretations issued thereunder, is to ensure that all member communications with the public, including advertisements, sales literature, and correspondence, are based on principles of fair dealing and good faith, are fair and balanced, and provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. Among other things, the Department reviews member communications with the public for false, exaggerated,

unwarranted, misleading statements or claims, and exaggerated or unwarranted claims, opinions or forecasts.

The purpose of the proposed rule change is to amend Section 13 to raise the fee that may be charged by the Department for reviewing each and every item of advertisement, sales literature, and other such material, whether in printed, video or other form, filed with or submitted to NASD (except for items that are filed or submitted in response to a written request from the Department issued pursuant to the spot check procedures set forth in NASD's Rules).

Despite annual cost increases, NASD has not adjusted the charge to members for submitting advertisements, sales literature, and other such material to the Department since 1999. A recent analysis of the Department's operating and technology costs showed that NASD's costs have increased significantly due to increased responsibilities, economic conditions and the need for enhanced technology. Based on this review, NASD proposes to raise the fee charged for the review of printed material and video or audio media from \$75.00 to \$100.00 to offset these cost increases.

The staff proposes that the rate change will go into effect on 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.

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 review charge is reasonable based on NASD's costs and equitably allocated among all members that file or submit advertisements, sales literature, and other such material, whether in printed, video or other form.

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. Please include File Number SR-NASD-2004-179 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-2004-179. 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-2004-179 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.⁵

Secretary

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