

positions.<sup>13</sup> Although many Amex specialists appeared to perform well under the adverse conditions, specialist performance during this period varied widely.

The Division also examined Amex specialist performance during the volatile conditions of October 13 and 16, 1989. The Division found that specialist performance during that time was similar in many respects to specialist performance during the 1987 market break.<sup>14</sup> Specifically, the Division found that, during these two periods of extreme market volatility, specialists were confronted with extraordinary order imbalances that required unprecedented capital commitments.<sup>15</sup> As in October 1987, specialists as a whole on October 13, 1989 were substantial buyers in the face of heavy selling pressure, although performance varied among specialists.

Both the 1987 Report and the 1989 Analysis reaffirmed the importance of specialist participation in countering market trends during periods of market volatility. At the same time, the reports emphasized the importance the Commission placed on the Amex's ability to ensure that all specialists comply with their affirmative and negative market making obligations during such periods.<sup>16</sup>

The Commission recognizes that market conditions may exist at times where it is necessary or desirable to provide specialists with additional flexibility in establishing or increasing a position in order to facilitate their ability to maintain fair and orderly markets, particularly during unusual market conditions. Accordingly, the Commission believes that it is appropriate for the Amex to remove those provisions of Rule 170.01 that require floor official approval for certain specialist purchases on zero-minus ticks and specialist sales on zero-plus ticks.<sup>17</sup>

<sup>13</sup> See 1987 Report at 4-48.

<sup>14</sup> See Market Analysis of October 13 and 16, 1989 ("1989 Analysis") at 3-4 and 33-44.

<sup>15</sup> See 1987 Report at 4-8 and 1989 Report at 23-26.

<sup>16</sup> A specialist's dealer responsibilities consist of "affirmative" and "negative" obligations. In accordance with their affirmative obligations, specialists are obligated to trade for their own accounts to minimize order disparities and contribute to continuity and depth in the market. Conversely, pursuant to their negative obligations, specialists are precluded from trading for their own accounts unless such dealing is necessary for the maintenance of a fair and orderly market. In view of these obligations, the price trend in a security should be determined not by specialist trading but by the movements of the incoming orders that initiate these trades.

<sup>17</sup> The Commission notes that Rule 170.01 currently only requires floor official approval for purchases or sales at a price equal to the last sale price when all or substantially all the stock offered/

The proposed changes may allow specialists, during periods of market volatility, to keep any general price movements orderly, thereby furthering the maintenance of fair and orderly markets consistent with Sections 6 and 11 of the Act. The Commission emphasizes, however, that the expanded flexibility afforded to specialists by the proposal merely obviates the current required floor official approval for the affected transactions and does not reflect that all specialist purchases on zero-minus ticks and sales on zero-plus ticks are appropriate. Notably, specialists remain subject to their "negative obligations," specifically, the requirement that specialists are precluded from trading for their own account unless such dealing is necessary for the maintenance of a fair and orderly market.<sup>18</sup>

Finally, the Commission believes that the Amex's established surveillance procedures and criteria, including the automated computer program which identifies each instance in which a specialist crosses the market, should allow the Exchange to monitor specialist compliance with Amex Rule 170.01. In addition, the Commission expects the Amex to monitor carefully compliance with the procedures of Amex Rule 170 as required under Section 19(g) of the Act.<sup>19</sup>

For the foregoing reasons, the Commission finds that the Amex's proposal to permit specialists to engage in certain types of transactions by removing existing restrictions that currently limit specialists when establishing or increasing a position in their specialty stocks is consistent with the requirements of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-Amex-97-10), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

bid on the limit order book represents all or substantially all the stock offered/bid in the market. Moreover, the rule currently does not require floor official approval of such transactions if they are effected in "less active markets" where they are an essential part of a proper course of dealings and where the amount of stock involved and the price change, if any, are normal in relation to the market.

<sup>18</sup> In addition, Amex Rule 170.01 clearly requires that covered transactions must be reasonably necessary to render the specialist's position adequate to such needs.

<sup>19</sup> Section 19(g) of the Act requires every self-regulatory organization to comply with, and enforce compliance with, the Act, the rules thereunder and its own rules.

<sup>20</sup> 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39033; File No. SR-NASD-97-62]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Gross Income Assessments to Member Firms

September 9, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on August 22, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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 the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing a rule change to amend Section 1(c) to Schedule A of the NASD By-Laws ("Schedule A") to revise the credit allowed to members against the annual assessment on their gross income. The text of the proposed rule change is below. Additions are italicized; deletions are bracketed.

\* \* \* \* \*

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

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

#### Section 1—Assessments

Each member shall pay an annual assessment composed of:

- (a) No Change.
- (b) No Change.
- (c) Members shall receive a credit against the annual assessment on gross income stated in paragraph (a) above as follows:

- (1) Portion of assessment > \$5,000 — 21% [23%]
- (2) Portion of assessment > \$25,000 — 3% [4%] additional

<sup>1</sup> 15 U.S.C. 78s(b)(91) (1994).

- (3) Portion of assessment > \$50,000 —  
5% additional  
(4) Portion of assessment > \$100,000 —  
3% [4%] additional.

\* \* \* \* \*

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

In its filing with the Commission, the 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. The NASD Regulation, Inc. ("NASD Regulation") 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

Pursuant to Article VI of the NASD By-Laws, the NASD requires its members to pay an annual assessment fee, as defined by Schedule A, Section 1. NASD members are required under Section 1(a) of Schedule A to pay an amount equal to the greater of \$1,200.00 or the total of a specified percentage of their annual gross income from securities transactions.<sup>2</sup> NASD members also receive, pursuant to Section 1(c) of Schedule A, a credit against the annual assessment on their gross income imposed under Section 1(a) of Schedule A.

A. The Section 1(c) of Schedule A credit to members is calculated by a tiered discount structure that is intended to address, to some extent, the regulatory subsidy provided by larger NASD firms.

The proposed rule change would amend Section 1(c) of Schedule A to decrease the credit allowed to members against the annual assessment on their gross income by an average of approximately 10%. This reduction in credit allowed to members will result in approximately \$2.8 million of additional revenue in 1997 for the

NASD. This action, based on the current forecast for operating costs and other revenues, should allow the NASD to fund its operating needs and achieve a balanced budget for 1997. The need for this discount rate change results from various factors, including a shortfall in the members' 1996 reported gross revenues subject to this assessment, as well as incremental costs associated with various computer and technology related initiatives and various personnel programs.

#### 2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,<sup>3</sup> which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges in that the proposed rule reasonably provides for an equitable reduction in the tiered discount structure applied to the gross revenue assessment.

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

The 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.

### 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 establishes or changes a due, fee, or other charge and, therefore, has become effective on August 22, 1997, pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and subparagraph (e) of Rule 19b-4<sup>5</sup> thereunder. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate the 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.

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 the NASD. All submissions should refer to file number SR-NASD-97-62 and should be submitted by October 7, 1997.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39043; File No. SR-NASD-97-10]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Distribution of Information Concerning the Availability of the NASD's Public Disclosure Program

September 10, 1997.

#### I. Introduction

On February 11, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), 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> a proposal to adopt NASD Rule 2280, "Investor Education and Protection," which will require certain NASD members to provide customers with the following items of information in

<sup>2</sup> Schedule A, Section 1(a) requires NASD members to pay an amount equal to the greater of \$1,200.00 or the total of: (i) 0.125% of the annual gross revenue from state and municipal securities transactions; (ii) 0.125% of annual gross revenue from other over-the-counter securities transactions; (iii) 0.125% of the annual gross revenue from U.S. Government securities transactions, and; (iv) with respect to members whose books, records, and financial operations are examined by the NASD, 0.125% of annual gross revenue from securities transactions executed on an exchange.

<sup>3</sup> 15 U.S.C. 78o-3(b)(5) (1994).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii) (1994).

<sup>5</sup> 17 CFR 240.19b-4 (1997).

<sup>6</sup> 17 CFR 200.30-3(a)(12) (1997).

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

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