

considerably reduce the prevalence of this problem and help to ensure that syndicate members receive the full designation credit they have earned.”<sup>31</sup>

Another commentator opposes the draft amendment in its entirety.<sup>32</sup> It believes that the designation information “would potentially be used to promote further fixed economics in the municipal bond industry, through the use of set-asides or similar methods of allocation \* \* \* the industry must allow the market system to allocate the economics if dealers are to efficiently allocate their resources.” It further stated that “those firms that provide services to investors, such as research, liquidity and analysis, profit by being compensated by those investors in the form of designations” and fixed economics would provide a deterrent to “firms from providing services to investors and the market at large.” It also noted that it opposes the draft amendment because, for senior managers to be in compliance with any timeframe contained within the rule, they would have to rely on buyers making their designations within that timeframe. This commentator stated that, if the Board determines to go forward with the draft amendment, it would support BMA’s comment to disclose designations “upon the later of three days after notice from the buyer or ten days after the date of sale.”

The Board has determined to propose the draft amendment because it believes all syndicate members have the right to the disclosure of all designation information. The Board does not believe the proposed rule change will be used to promote “fixed economics” in the municipal securities industry. The Board did decide, however, to change the timeframe to require disclosure to syndicate members of all available designation information within 10 business days following the date of sale and all information with the sending of the designation checks. The Board believes almost all of the information will be available within 10 business days, but the additional time is provided to receive any late information.

*Rule G-11(g):* Require the senior manager to disclose to members of the syndicate, in writing, within 10 business days following the date of sale, the amount of any portion of the take-down that is directed to each member of the syndicate by the issuer.

Six commentators<sup>33</sup> support this draft amendment with one commentator

noting “this part of the take-down should be disclosed to syndicate members in the same manner as customer designations.”<sup>34</sup> One commentator is opposed to the amendment noting that it would provide a means for syndicate members to challenge senior managers about their decisions.<sup>35</sup> Another commentator believes that the disclosure of a dealer’s take-down should be made only to that dealer.<sup>36</sup> Two commentators suggested that the timeframe be changed to 15 days following the date of sale.<sup>37</sup> One commentator suggested that the timeframe be changed to the later of 15 business days following the date of sale, or three business days following receipt by the senior manager of notification of such set-asides.<sup>38</sup>

The Board has determined to propose the draft amendment because it believes all syndicate members have the right to the disclosure of all take-down information. The Board did decide, however, to change the timeframe to the later of 15 business days following the date of sale or three business days following receipt by the managing underwriter of notification of such set asides.

*Rule G-12(k):* Move the deadline for payment of designations from 30 business days following delivery of the securities to the customer to 30 calendar days after the issuer delivers the securities to the syndicate.

Eight commentators support this draft amendment.<sup>39</sup> One commentator stated that the amendment “will greatly streamline the underwriting process.”<sup>40</sup>

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

<sup>34</sup> BMA.

<sup>35</sup> Goldman Sachs.

<sup>36</sup> Artemis.

<sup>37</sup> Newman and Wachovia.

<sup>38</sup> BMA.

<sup>39</sup> Artemis, BMA, Edward Jones, Goldman Sachs, Newman, Rauscher Pierce, Smith Barney and Wachovia.

<sup>40</sup> BMA.

### 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 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 the filing will also be available for inspection and copying at the Board’s principal offices. All submissions should refer to File No. SR-MSRB-97-15 and should be submitted by May 12, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>41</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39866; File No. SR-NASD-98-31]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Implement the Effective Date of Recently-Approved Amendments to Rules 3010 and 3110

April 14, 1998.

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 April 7, 1998, the NASD Regulation, Inc. (“NASDR”) 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 NASDR. The NASDR

<sup>41</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>31</sup> Artemis.

<sup>32</sup> Smith Barney.

<sup>33</sup> BMA, GFOA, Newman, Rauscher Pierce, Smith Barney and Wachovia.

has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning of an existing rule under Section 19(b)(3)(A)(i) of the Act,<sup>3</sup> which renders the rule effective upon the Commission's receipt of this filing. 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**

The NASDR is proposing to implement the effective date of recently-approved amendments to the National Association of Securities Dealers, Inc. ("NASD" or "Association") Rules 3010, "Supervision," and 3110, "Books and Records."

### **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 NASDR 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 NASDR 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**

A proposed rule change to amend NASD Rules 3010 and 3110 was filed with the Commission on April 11, 1997.<sup>4</sup> The purpose of the amendments was to allow firms to develop flexible procedures for the review of correspondence with the public. In that filing, the NASDR stated that it would make the proposed rule change effective within 45 days of Commission approval. Amendment No. 1, containing a draft Notice to Members to be issued following approval of the proposed rule change, was filed with the Commission on December 1, 1997.<sup>5</sup> The Notice to Members described the new rules and

provided guidance to NASD members on the implementation of the new rules. The Commission approved the proposed rule change and Amendment No. 1 to the proposed rule change on December 31, 1997.<sup>6</sup> Notice to Members 98-11 announced approval of the proposed rule change and stated that the amendments to Rules 3010 and 3110 would be effective on February 15, 1998.

Subsequent to approval of the proposed rule change by the SEC, several commenters filed letters with the SEC raising issues regarding Amendment No. 1 to the proposed rule change and its accompanying Notice to Members.<sup>7</sup> The NASDR, believing that the letters raise important issues that should be fully addressed before the effectiveness of the rule change, filed a proposed rule change to postpone the effective date of the amendments to Rules 3010 and 3110 approved in Release No. 39510.<sup>8</sup>

The concerns raised by the commenters include issues concerning the effect of the rules on the review of incoming correspondence and the scope of the obligation of member firms to control the use of electronic communications systems that registered persons use to communicate with their customers. After considering these issues, the NASDR proposes to implement the amendments to Rules 3010 and 3110 approved in Release No. 39510 immediately, including the

requirements set forth in Notice to Members 98-11, with the exception of the provision in the Notice stating that members must review "all incoming correspondence received in non-electronic format directed to registered representatives and related to a member's investment banking or securities business." The NASDR proposes to delay the effective date of this provision until July 7, 1998. Extension of the effective date for this provision will allow the NASDR a further opportunity to consider comments on this issue. Prior to this effective date, however, members will be required to review and report customer complaints as required by Rule 3070(a)(2); keep and preserve all written customer complaints as required by Rule 3110(d); and establish procedures for the review of incoming and outgoing written and electronic correspondence consistent with new Rules 3010(d)(1) and (2).

Among other things, the NASDR proposes to make effective immediately that portion of the Notice of Members that states that members' supervisory policies and procedures must:

prohibit registered representatives and other employees' use of electronic correspondence to the public unless such communications are subject to supervisory and review procedures developed by the firm. For example, NASDR would expect members to prohibit correspondence with customers from employees' home computers or through third party systems unless the firm is capable of monitoring such communications.

In response to comments received regarding this provision in the Notice, the NASDR wishes to point out that the Notice to Members does not establish any new obligation that is not already encompassed by Rule 3010's requirement that firms supervise the activities of their associated persons and registered representatives to ensure compliance with applicable securities laws and regulations and NASD rules and merely provides guidance to members on how they can comply with Rule 3010. Furthermore, the Notice to Members does not prohibit the use of such systems or dictate the use of a particular system. The Notice only points out that firms should prohibit correspondence with customers through electronic communication systems unless the firm is capable of supervising the communications. In developing procedures for the review of correspondence, each firm must determine how it will review different types of correspondence, including electronic correspondence. If the firm determines that it can subject correspondence to customers through

<sup>6</sup> See Securities Exchange Act Release No. 39510 (December 31, 1997) 63 FR 1131 (January 8, 1998) ("Release No. 39510").

<sup>7</sup> See Letters from Carl B. Wilkerson, American Council of Life Insurance, to Jonathan G. Katz, Secretary, SEC, dated January 9, 1998 and January 29, 1998; Beverly A. Byre, BenefitsCorp Equities, Inc., to Jonathan G. Katz, Secretary, SEC, dated January 26, 1998; Michael S. Martin, The Equitable Life Assurance Society of the United States, to Jonathan G. Katz, SEC, dated January 29, 1998; Janet G. McCallen, International Association for Financial Planning, to Jonathan G. Katz, Secretary, SEC, dated February 13, 1998; W. Thomas Boulter, Jefferson Pilot Financial, to Jonathan G. Katz, Secretary, SEC, dated January 28, 1998; Leonard M. Bakal, Metropolitan Life Insurance Company and MetLife Securities, Inc., to Jonathan G. Katz, Secretary, SEC, dated January 28, 1998; Michael L. Kerley, MML Investors Services, Inc. to Secretary, SEC, dated January 26, 1998; Mark D. Johnson, The National Association of Life Underwriters, to Jonathan G. Katz, Secretary, SEC, dated February 5, 1998; Theodore Mathas, NYLIFE Securities, to Jonathan G. Katz, Secretary, SEC, dated January 16, 1998 and January 29, 1998; Beverly A. Byrne, One Orchard Equities, Inc., to Jonathan G. Katz, Secretary, SEC, dated January 26, 1998; Dodie Kent, Pruco Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated January 29, 1998; and James T. Bruce, Wiley, Rein & Fielding, on behalf of the Electronic Messaging Association, to Jonathan G. Katz, Secretary, SEC, dated January 30, 1998.

<sup>8</sup> The proposed rule change (SR-NASD-98-10) became effective on filing. See Securities Exchange Act Release No. 39665 (February 13, 1998) 63 FR 9032 (February 23, 1998).

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

<sup>4</sup> The proposed rule change (SR-NASD-97-24) was published for comment in the **Federal Register** on May 2, 1997. See Securities Exchange Act Release No. 38548 (April 25, 1997) 62 FR 24147.

<sup>5</sup> See Letter from Mary N. Revell, Associate General Counsel, NASDR, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 1, 1997 ("Amendment No. 1").

electronic communication systems to appropriate supervision and review, the firm can allow employees to correspond with customers through such systems.

## 2. Statutory Basis

The NASDR believes the proposed rule change is consistent with Section 15A(b)(6) of the Act,<sup>9</sup> which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that implementing the effective date of the new rules with the exception of the requirement to review all incoming non-electronic correspondence is consistent with these requirements.

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

NASDR does not believe that the proposed rule change will impose a 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, Participation 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 constitutes a stated policy, practice, or interpretation with respect to the meaning, administration or enforcement of an existing rule of the Association and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (e) of rule 19b-4 thereunder.<sup>11</sup>

At any time within 60 days of the filing of such 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.

Persons making written submission 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, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing also will be available for inspection and copying at the NASD. All submissions should refer to File No. SR-NASD-98-31 and should be submitted by May 12, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 98-10420 Filed 4-20-98; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39863; File No. SR-NSCC-98-1]

### **Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Charges**

April 14, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on February 12, 1998, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

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

The proposed rule change reduces certain fees, lowers certain caps on fees, and implements one new cap on certain fees.

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

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>2</sup>

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

NSCC's fees are based in part on the expected volume of transactions submitted to NSCC for processing. Because the volume of transactions submitted to NSCC for processing has increased over the past few years, NSCC has determined that it is appropriate to reduce certain fees, to lower certain caps on certain fees, and to implement one new cap. The proposed changes are as follows:

#### (1) Trade Comparison Fee

Currently, the trade comparison fee for each side of each stock, warrant, or right trade submitted is \$.018 per 100 shares with a minimum fee of \$.072 and a maximum fee of \$1.35. This rule change reduces this maximum fee from \$1.35 to \$1.08.

#### (2) Trade Recording Fee

At present, the trade recording fee for each side of each stock, warrant, or right item originally compared by other parties but cleared through NSCC is \$.012 per 100 shares with a minimum fee of \$.048 and a maximum fee of \$.90. This rule change reduces the trade recording fee of such items to \$.008 per 100 shares with a minimum fee of \$.032 and a maximum fee of \$.48.

#### (3) Trade Clearance Fees

Current trade clearance fees are as follows: \$.50 per issue received from NSCC's continuous net settlement ("CNS") system to satisfy a long valued

<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 19b-4(e).

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

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by NSCC.