

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41920; File No. SR-NASD-99-36]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Selection of Chairs and Vice Chairs of the National Adjudicatory Council

September 27, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 4, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

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

NASD Regulation is proposing to amend its by-laws to clarify that the outgoing members of the National Adjudicatory Council ("NAC") will select a Chair and Vice Chair from among the members who will be serving on the NAC the following year. Currently, the new Board selects the Chair and Vice Chair. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

By-Laws of NASD Regulation, Inc.

Article V

National Adjudicatory Council

Appointment and Authority

Sec. 5.1 No change.

Number of Members and Qualifications

Sec. 5.2(a) No change.

(b) [As soon as practicable following the appointment of members, the] *The incumbent* National Adjudicatory Council shall elect a Chair and a Vice Chair from among [its] *the* members

servicing during the following term. The Chair and Vice Chair shall have such powers and duties as may be determined from time to time by the National Adjudicatory Council. The Chair also shall serve as a Director of the NASD Regulation Board and a Governor of the NASD Board for a one-year term as provided in the by-laws and Restated Certificate of Incorporation of the NASD and these by-laws. The Board, by resolution adopted by a majority of Directors then in office and after notice to the NASD Board, may remove the Chair or Vice Chair from such position at any time for refusal, failure, neglect, or inability to discharge his or her duties.

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 Regulation 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 III below. 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

On January 15, 1998, the adjudicatory functions of the National Business Conduct Committee ("NBCC") were transferred to the NAC. Presently, the Association believes that the NASD Regulation By-Laws are unclear as to whether the outgoing or newly appointed NAC select the Chair and Vice Chair. Since the formation of the NAC, there has been only one selection and the Chair and Vice Chair were selected from the newly appointed NAC. The NASD proposes to direct the outgoing NAC to select either a returning or a new member of the NAC to serve in these positions for the following year. The NASD believes that the outgoing NAC members are particularly well suited to select the Chair and Vice Chair for the following year, and will prevent delay in the selection of the Chair, who is also a member of the NASD Board of Governors, and Vice Chair. The Association represents that this proposal is also consistent with the practice that was used by the NBCC, the

predecessor of the NAC, in selecting its Chair and Vice Chair.

(2) Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,³ 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 permitting the outgoing NAC to select the Chair and Vice Chair for the following year will prevent delay and result in the selection of the most highly qualified candidates, who will serve important roles in reviewing disciplinary, membership and other matters for the Association.

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, 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. 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 20549-0609. Copies of the submissions, 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 Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78o-3(b)(6).

SR-NASD-99-36 and should be submitted by October 25, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Upon review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁴ In particular, the Commission believes the proposal is consistent with Section 15A(b)(6) of the Act which requires, amongst other things, that the rules of an association be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public.⁵ The Association believes that the NASD Regulation By-Laws are unclear on how the Chair and Vice-Chair for the incoming NAC are chosen. While neither agreeing or disagreeing with this interpretation of the current NASD Regulation By-Laws, the Commission believes that the proposed rule change, which permits the incumbent NAC to select the Chair and Vice Chair of the incoming NAC, will facilitate selection of these important positions and prevent delays in the exercise of the NAC's delegated self-regulatory responsibilities.⁶ Additionally, the Commission notes that the proposal is consistent with the practice utilized by the NBCC, the NAC's predecessor.

Finally, the Commission finds good cause pursuant to Section 19(b)(2) ⁷ for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register**. Accelerated approval of the proposed rule change should insure that the proposed selection procedures for the NAC Chair and Vice Chair can be used for the scheduled November 1999, appointment of the new NAC.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-NASD-99-

36) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41937; File No. SR-NASD-99-43]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Central Registration Depository Fees

September 28, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") ¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 7, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary NASD Regulation, Inc. ("NASD Regulation" or "NASDR"), 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 by NASD Regulation. The NASD has designated this proposal as one changing a due, fee, or other charge imposed by the NASD under Section 19(b)(3)(A) of the Act,³ 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

The NASD proposes to amend Schedule A of the NASD By-Laws to revise the fees imposed for filings made with the Central Registration Depository ("CRD"). Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

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;]

[(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) \$15.00] *\$30.00* annually for each of the member's registered representatives and principals [to renew the registration for the following year] *for system processing.*

* * * * *

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

The proposed rule change amends Schedule A of the NASD By-Laws to revise certain fees charged for operating the Central Registration Depository ("CRD"). Currently, the NASD charges a \$20.00 fee for each Form U-4 and U-5 amendment, and a \$15.00 annual registration renewal fee for each registered person. The NASD has determined to discontinue charging the \$20.00 amendment fee and instead charge an annual \$30.00 system processing fee, which is designed to cover the costs of both registration renewals and amendments. This fee structure is more predictable and will assist firms in budgeting for CRD-related expenses and the NASD in forecasting its revenues to help ensure that all CRD

⁴ In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78o-3(b)(6).

⁶ The NASD will generally attempt to provide the incumbent NAC with a two week period during which the names of the newly appointed NAC members can be reviewed. Telephone conversation between Eric Moss, Assistant General Counsel, Office of General Counsel, NASD Regulation and Marc McKayle, Attorney, Division of Market Regulation, Commission, dated August 24, 1999.

⁷ 15 U.S.C. 78s(b)(2).

⁸ *Id.*