

inactive status. A participant that requests that it be placed on inactive status will no longer be assessable pursuant to Rule 4 for losses due to other members.

While in inactive status, the participant must continue to provide the same financial reports that are required to active members and also must comply with all other reporting obligations. A participant that fails to do so will be subject to the same terms and conditions as active members (e.g. fines, disciplinary action, termination, etc.). An inactive member will also be responsible for a reduced monthly account maintenance fee of \$200.

At the time the participant determines to reactivate its membership status, an initial clearing fund deposit will be determined in the same manner as for a new applicant, and membership approval must be granted by the Membership and Risk Management Committee. Inactive members will not be required to reexecute membership agreements or provide other documentation to the extent EMCC determines that it already has the required documentation or information (e.g. financials) necessary to make a determination on the reactivation request. If the participant is inactive for longer than eighteen months, EMCC will require an opinion of the participant's counsel in a form satisfactory to EMCC that affirms that there is not substantive change in the opinion(s) previously given as part of the member's original application for membership.

EMCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act³ and the rules and regulations thereunder because it will permit the equitable allocation of charges among participants.

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

EMCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

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

Written comments from EMCC members have not been solicited or received on the proposed rule change.

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

Within thirty-five 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 ninety 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.

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 5th Street NW., Washington, DC 20549-0069. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-EMCC-2003-04. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at EMCC's principal office. All submissions should refer to File No. SR-EMCC-2003-04 and should be submitted by October 9, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48488; File No. SR-NASD-2003-138]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Changes to the Territorial Boundaries of Certain NASD District Offices

September 12, 2003.

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 3, 2003, the National Association of Securities Dealers, Inc. ("NASD"), submitted to 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. 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 Schedule B to the NASD By-Laws to change the territorial boundaries of certain NASD District Offices. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

Schedule B to the NASD By-Laws

The number and territorial boundaries of the several districts established as provided in Section 1 of Article VIII are as follows:

District No. 1 through District No. 4: No change.

District No. 5: States of Alabama, Arkansas, [Kentucky,] Louisiana, Mississippi, Oklahoma and Tennessee.

District No. 6 through District No. 7: No change.

District No. 8: States of Illinois, Indiana, *Kentucky*, Michigan, Ohio and Wisconsin[, and, in the State of New York, the Counties of Monroe, Livingston and Steuben, and the remainder of the State West of such Counties].

District No. 9: The District of Columbia, and the States of Delaware, Maryland, *New Jersey*, Pennsylvania, Virginia, [and] West Virginia, and *New York (except for the Counties of Nassau,*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78q-1.

⁴ 17 CFR 200.030-3(a)(12).

Orange, Putnam, Rockland, Suffolk, Westchester, and the five Boroughs of New York City) [, in the States of New Jersey, the Counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean and Salem].

District No. 10: In the State of New York, the Counties of Nassau, Orange, Putnam, Rockland, Suffolk, Westchester, and the five Boroughs of New York City[, and the State of New Jersey (except for the Counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean and Salem)].

District No. 11: States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont [,and New York (except for the Counties of Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester; the Counties of Monroe, Livingston and Steuben, and the remainder of the State West of such Counties; and the five Boroughs of New York City)].

* * * * *

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

NASD has experienced a shift in member locations resulting in certain District Offices no longer having close proximity to a critical mass of members. Accordingly, NASD is proposing to amend Schedule B to the NASD By-Laws to change the territorial boundaries of certain NASD District Offices to reflect this shift. The proposed amendments to Schedule B will also allow NASD to better manage its resources and expenses and will enhance coordination with other self-regulatory organizations, the states, and the SEC. Specifically, the proposed rule change will amend Schedule B to the NASD By-Laws as follows:

- District No. 5: Will be amended to delete the state of Kentucky.

- District No. 8: Will be amended to: (1) Include the state of Kentucky, and (2) delete any reference to the state of New York.

- District No. 9: Will be amended to: (1) Include the state of New York, except for the Counties of Nassau, Orange, Putnam, Rockland, Suffolk, Westchester, and the five boroughs of New York City; (2) include the entire state of New Jersey; and (3) delete the references to New Jersey Counties Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean, and Salem.

- District No. 10: Will be amended to delete any reference to the state of New Jersey.

- District No. 11: Will be amended to delete any reference to the state of New York.

The remaining allocations of states among District Offices as reflected in Schedule B will remain the same.

The proposed rule change will not only provide NASD with a more coherent regional balance among the District Offices, it will also allow NASD to manage more effectively its resources and expenses when discharging its regulatory programs and permit better coordination among other self-regulatory organizations, the states, and the SEC. In addition, the proposed rule change will help NASD better balance the composition of member firms assigned to the District Offices.

2. Statutory Basis

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 NASD'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 restructuring that will result from the proposed rule change will provide a more coherent regional balance as well as allow for a more equitable distribution of NASD's District Offices' workloads and resources.

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

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

³ 15 U.S.C. 78o-3(6).

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,⁴ and subparagraph (f)(3) of Rule 19b-4 thereunder⁵ because it is concerned solely with the administration of the self-regulatory organization. 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. 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 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 NASD. All submissions should refer to File No. NASD-2003-138 and should be submitted by October 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

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⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(3).

⁶ 17 CFR 200.30-3(a)(12).