

part of a complex order. The actual price of the trade will be reported.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the Act in general, and Section 6(b)(5)⁶ in particular. The Exchange states that the proposed rule change is intended to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange further believes that the automated procedure for transmitting the stock leg(s) of a stock-option order would provide a more efficient means for members to execute orders, and the execution of the options leg(s) of a stock-option order in \$.01 minimum increments would improve investors' ability to receive execution of their orders.

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

The proposed rule change does not impose 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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 Exchange 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 Fifth Street NW., Washington, DC 20549-0609. Comments should be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-ISE-2003-37. 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, comments should be sent in hard copy or by e-mail but not by both methods. 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 filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-ISE-2003-37 and should be submitted by February 3, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Jill M. Peterson,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49030; File No. SR-NASD-2003-194]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Elimination of Duplicate Assessments and Fees Contained in Schedule A of the NASD By-Laws

January 6, 2004.

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 December 29, 2003, the National Association of Securities Dealers, Inc. ("NASD"), 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 the NASD. NASD has designated the proposed rule change as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act³ and Rule 19b-4(f)(1) thereunder⁴ and as establishing or changing a due, fee, or other charge under Section 19(b)(3)(A)(ii) of the Act⁵ and Rule 19b-4(f)(2) thereunder,⁶ which render the proposal effective upon receipt of this filing by the Commission.⁷ 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 Section 5 of Schedule A to the NASD By-Laws ("Section 5") to clarify that two or more members that are under substantially the same ownership or control (commonly referred to as a "simultaneous filing group" or "SFG") may eliminate certain duplicate fees and assessments and to remind members to provide NASD with prior notice in the format specified by NASD if they wish to establish eligibility for the reduced fees. Below is the text of the proposed rule change. Proposed new language is in *italic*; proposed deletions are in brackets.

* * * * *

Schedule A to NASD By-Laws

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

Sections 1 through 4. No change.

Section 5—Elimination of Duplicate Assessments and Fees

Two or more members under substantially the same ownership or control shall be required to pay (1) only one personnel assessment and one [registration renewal] *system processing* fee annually for those individuals

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b-4(f)(1).

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁶ 17 CFR 240.19b-4(f)(2).

⁷ NASD clarified that it filed the proposed rule change pursuant to both Section 19(b)(3)(A)(i) and Section 19(b)(3)(A)(ii) of the Act, as discussed in the purpose section of the notice and in the body of NASD's Form 19b-4 filing. Telephone conversation between Shirley H. Weiss, Associate General Counsel, NASD, and David A. Hsu, Attorney, Division of Market Regulation, Commission, on January 6, 2004.

⁶ 15 U.S.C. 78f(b)(5).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

employed by more than one of the members; [and] (2) only one fee annually for each branch office registered at the same location by more than one of the members[.]; and (3) [There shall be] only one registration fee, one fingerprint processing fee, and one termination fee applicable to each applicant registered or terminated simultaneously with two or more members under substantially the same ownership or control. To establish their eligibility to receive the reduction in fees described herein, members must provide NASD with information as requested by NASD and in the format specified by NASD prior to NASD's assessment of such 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, 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

Section 5 addresses the elimination of certain duplicate assessments and fees for two or more members under substantially the same ownership or control. The proposed rule change will amend Section 5 to codify NASD's stated policies and practices with respect to the availability of these reduced fees to simultaneous filing groups. First, the proposed rule change will change the reference to a "registration renewal fee" to "system processing fee," to conform the terminology to an amendment to Section 5 made in 1999.⁸ Second, the proposed rule change will clarify that, in addition to being able to pay only one system processing fee, a simultaneous filing group, as described in Section 5, may pay only one fingerprint processing fee and one termination fee. Third, the

proposed rule change will add language reminding members that, as a procedural matter, they must provide NASD with certain information as requested by NASD and in the format specified by NASD in order to receive the reduced fees prior to NASD's assessment of such fees.

NASD notes that this language will codify existing long-standing practice, which requires members to follow certain procedures to obtain the benefits of NASD's simultaneous filing group program and the reduced registration fees associated therewith, including establishing an simultaneous filing group, notifying NASD staff of the affiliated firms included in the simultaneous filing group, and requesting and completing an SFG Participation Agreement.⁹

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,¹⁰ which requires, among other things, that NASD rules provide for the equitable allocation of reasonable dues, fees, and other charges among members, issuers and other persons using any facility or system that NASD operates or controls. NASD also believes that the proposed rule change to amend Section 5 will more accurately reflect its long-standing policies and practices with respect to assessing certain reduced fees to simultaneous filing groups that establish their eligibility for such reductions.

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.

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 Sections 19(b)(3)(A)(i) and (ii) of the Act¹¹ and subparagraphs (f)(1) and (f)(2) of Rule

19b-4 thereunder¹² because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule and establishes or changes a due, fee, or other charge.¹³ At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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. 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-NASD-2003-194. 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, comments should be sent in hard copy or by e-mail but not by both methods. 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. SR-NASD-2003-194 and should be submitted by February 3, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Jill M. Peterson,

Assistant Secretary.

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⁸ The "registration renewal fee" was replaced with a "system processing fee" in 1999. See Exchange Act Release No. 41937 (Sept. 28, 1999). The reference in Section 5 to "registration renewal fee" should have been, but was not, changed at that time.

⁹ NASD is in the process of posting a description of the Simultaneous Form Filing Program on its Web site. In the interim, and thereafter, members may call NASD's Gateway Call Center (301-590-6500) for information about the program.

¹⁰ 15 U.S.C. 78o-3(b)(5).

¹¹ 15 U.S.C. 78s(b)(3)(A)(i) and (ii).

¹² 17 CFR 240.19b-4(f)(1) and (2).

¹³ See *supra* note 7.

¹⁴ 17 CFR 200.30-3(a)(12).