

per share charge for accessing liquidity from ECNs. Each of two affiliates would pay \$0.001 per share until the \$10,000 cap had been reached by the affiliates in the aggregate; thereafter, each affiliate would pay no fee for the remainder of the month. Volume-based discounts that apply to marginal usage of a service that is provided on a monthly, rather than a daily, basis (e.g., the discount on the monthly fee for Nasdaq Workstation logons in excess of 150 logons) will be allocated to affiliates on a pro rata basis.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,<sup>15</sup> in general, and with section 15A(b)(5) of the Act,<sup>16</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq believes the proposed rule change will allow members to receive the benefits of volume-based discounts in Nasdaq's fee schedule when they choose to allocate their activity across a group of wholly owned subsidiaries or other affiliates, rather than across multiple MPIDs of the same member. Accordingly, Nasdaq believes the change will result in a wider availability of the discounts provided by the fee schedule.

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

Nasdaq 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. 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)(ii) of the Act<sup>17</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>18</sup> because it establishes or changes a due, fee, or other charge imposed by 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.<sup>19</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2004-103 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2004-103. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only

information that you wish to make available publicly.

All submissions should refer to File Number SR-NASD-2004-103 and should be submitted on or before August 20, 2004.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-17391 Filed 7-29-04; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50065; File No. SR-NASD-2004-108]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Treatment of Commodity Pool Trail Commissions

July 22, 2004.

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 July 13, 2004, the National Association of Securities Dealers, Inc. ("NASD"), 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 NASD. NASD has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of NASD under Section 19(b)(3)(A)(i) of the Act<sup>3</sup> and Rule 19b-4(f)(1) thereunder,<sup>4</sup> 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

NASD is filing a *Notice to Members* 04-50, discussing the treatment of commodity pool trail commissions under NASD Rule 2810 (Direct Participation Programs) ("Rule 2810").

<sup>20</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>3</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

<sup>15</sup> 15 U.S.C. 78o-3.

<sup>16</sup> 15 U.S.C. 78o-3(b)(5).

<sup>17</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>18</sup> 17 CFR 240.19b-4(f)(2).

<sup>19</sup> For purposes of calculating the 60-day abrogation period, the Commission considers the proposal to have been filed on July 21, 2004, the date Nasdaq filed Amendment No. 1.

No changes to the text of NASD rules are required by this proposed rule change.

## 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's Direct Participation Programs Rule governs public offerings of direct participation programs (DPPs), including establishing limits on the level of underwriting compensation. Historically, in reviewing the level of underwriting compensation in commodity pool DPPs, NASD staff has excluded certain trail commissions. In particular, NASD staff excluded trail commissions paid to an associated person of a member if: (1) The member was registered with the Commodity Futures Trading Commission as a Futures Commission Merchant; (2) the associated person receiving the trail commissions had passed the National Commodity Futures Examination (Series 3) or the Futures Managed Funds Examination (Series 31); and (3) the associated person receiving the trail commissions provided ongoing investor relations services to the investors. *Notice to Members 04-50* serves to advise members that effective immediately, NASD staff will consider all trail commissions paid in connection with commodity pool DPPs in calculating whether the level of underwriting compensation meets the requirements of Rule 2810.

#### 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>5</sup> 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. NASD believes that the proposed rule change is in the public interest and will benefit investors in commodity pool DPPs by limiting the compensation that can be paid to members for selling commodity pool DPPs, and servicing the accounts that hold such investments, to the same amounts that apply to all other DPP investments.

### (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, as amended.

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

The proposed rule change was published for comment in NASD *Notice to Members 04-07* (February 2004) (the "Notice"). Twenty-six comment letters addressing the issue of commodity pool DPP trail commissions were received in response to the *Notice*. Of the twenty-six comment letters received, two were in favor of the proposed rule change, twenty-three were opposed, and one expressed no opinion. Most of the commenters that opposed the proposed rule change noted generally the differences between commodity pools and other DPPs, and the services generally provided to persons investing in commodity pool DPPs. Many commenters also cited the benefits to investors of diversification by investing in commodities in general and in commodity pool DPPs in particular, but warned that if the level of underwriting compensation was capped, then they may no longer be in a position to recommend commodity pool DPPs to investors. However, six of the commenters that opposed the proposed rule change acknowledged that establishing compensation limits for selling commodity pool DPPs may be appropriate, but urged limits higher than those currently in place for other DPPs.

As discussed in *Notice to Members 04-50*, based upon NASD staff's review and analysis, including review of the comments received, NASD staff does not believe the reasons underlying the exclusion of certain trail commissions of commodity pool DPPs continue to apply today. NASD staff has seen no evidence that today's commodity pool DPP investors receive a significantly higher level of service than investors in other DPPs, including real estate, oil and gas, and equipment leasing partnerships.

Moreover, commenters failed to adequately explain the differences in service provided by persons who have passed the Series 3 or Series 31 (and thus met the exclusion) and those who have not (and thus remained subject to the compensation limits of the DPP Rule). Finally, NASD staff believes that notwithstanding a limit on the level of underwriting compensation, firms and registered representatives will continue to offer and recommend commodity pool DPPs where there are benefits to investors in terms of diversification and where such products meet investors' financial status and investment objectives.

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

NASD has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of NASD under Section 19(b)(3)(A)(i) of the Act<sup>6</sup> and Rule 19b-4(f)(1) thereunder,<sup>7</sup> which renders the proposal effective upon receipt of this filing by the Commission.

At any time within 60 days of the filing of such 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. Comments may be submitted by any of the following methods:

#### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2004-108 on the subject line.

#### Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2004-108. This file number should be included on the

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>7</sup> 17 CFR 240.19b-4(f)(1).

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

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. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 the file number SR-NASD-2004-108 and should be submitted by August 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-17398 Filed 7-29-04; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50085; File No. SR-NSCC-2003-05]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Permitting Elimination of All Hard Copies of Important Notices

July 26, 2004.

#### I. Introduction

On March 14, 2003, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-NSCC-2003-05 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on January 23, 2004.<sup>2</sup> One comment letter was received.<sup>3</sup> For the reasons

discussed below, the Commission is granting approval of the proposed rule change.

#### II. Description

NSCC currently distributes notices to its members in a hard copy form using U.S. mail for members outside of the New York area, the Direct Drop Boxes for each member with a New York presence, and using fax when necessary. The proposed rule change modifies NSCC's Rule 45 to allow NSCC to post notices on its website and to have these postings satisfy NSCC's notification obligations. The rule change would require members to access that website throughout the day. The proposed rule change also modifies NSCC's Rule 45 to allow NSCC to serve notices on interested persons as defined in Rule 37 by emailing the notices to an interested person's email address.

NSCC believes that the proposed rule change would facilitate the timely dissemination of information necessary for participation in NSCC and therefore is consistent with the requirements of the Act and the rules and regulations thereunder.

#### III. Comment

The Commission received one comment letter.<sup>4</sup> The commenter, which is an NSCC member, objects to the proposed rule change because it believes that the requirement under the proposed rule change to check NSCC's website on a daily basis for notices would require it to allocate special staffing to monitor the website and would be an inefficient use of its resources.

#### IV. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>5</sup> The timely dissemination of information to clearing corporation members is an important factor in the operation of a clearing agency. By allowing NSCC to post notices on its website instead of having to mail, put into a drop box, or fax, the proposed rule change should help to ensure that NSCC's members receive information from NSCC as quickly as possible and in a manner that is easily accessible. Furthermore, elimination of paper notices should reduce the possibility of nonreceipt of notices by members and should add efficiencies to NSCC's operations. Accordingly, the proposed

rule change should help to promote the prompt and accurate clearance and settlement of securities transactions.

In response to the comment letter, the Commission appreciates that the proposed rule change imposes a new burden on NSCC's members to periodically look for notices on NSCC's website instead of receiving them in physical form; however, the Commission believes this burden is small given the minimal amount of time it should take each NSCC member to review NSCC's website for notices. Furthermore, the Commission believes that any inconvenience or expense that may be incurred by NSCC's members as a result of the proposed rule change is outweighed by the benefit of having the notices be quickly and readily available to NSCC's members.

#### V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A 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 (File No. SR-NSCC-2003-05) be and hereby is approved.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-17395 Filed 7-29-04; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50069; File No. SR-OCC-2004-15]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Correct an Erroneous Cross-Reference Resulting From an Approved Rule Change

July 23, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 15, 2004, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared

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

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

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 49094 (January 16, 2004), 69 FR 3418.

<sup>3</sup> Letter from Richard Eustice, Vice President, Dimensional Fund Advisors (April 25, 2003).

<sup>4</sup> *Supra* note 3.

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).