

changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the 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 the NASD. All submissions should refer to File No. SR-NASD-2003-117 and should be submitted by September 17, 2003.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-21943 Filed 8-26-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48379; File No. SR-NASD-2003-109]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Changes in Fingerprint Processing Fees Contained in Schedule A of the NASD By-Laws

August 20, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 10, 2003, 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. On August 7, 2003, NASD filed an amendment to the proposal.<sup>3</sup> 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 (4)(b) of Schedule A of NASD's By-Laws to: (1) Increase the \$10.00 charge for each set of fingerprints submitted by a member to NASD for processing to \$13.00; (2) establish a \$13.00 charge to be paid to NASD for posting each set of fingerprint results and identifying information that have been processed through another self-regulatory organization ("SRO") and submitted by a member to NASD; and (3) substitute the term "fingerprints" for "fingerprint cards." NASD intends for the fees to become operative on July 15, 2003. Below is the text of the proposed rule change. Proposed new language is in

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

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

<sup>3</sup> See letter from Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, to Jonathan G. Katz, Secretary, Commission, dated August 6, 2003. ("Amendment No. 1"). In Amendment No. 1, NASD substituted in the first paragraph of Section I of Exhibit 1 of the filing the word "fingerprints" for the phrase "fingerprint images and identifying information" to make the introductory language of Section I consistent with the proposed rule text. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on August 7, 2003.

italics; proposed deletions are in brackets.<sup>4</sup>

\* \* \* \* \*

#### 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 3 No change.

#### Section 4—Fees

(a) No change.

(b) NASD shall assess each member a fee of:

(1) through (3) No change.

(4) [~~\$10.00~~] *\$13.00 for processing and posting to the CRD system each set of fingerprints* [each fingerprint card] submitted by the member to NASD, plus any other charge that may be imposed by the United States Department of Justice for processing [such] *each set of fingerprints* [card; and].

(5) *\$13.00 for processing and posting to the CRD system each set of fingerprint results and identifying information that have been processed through another self-regulatory organization and submitted by a member to NASD.*

[(5)] (6) \$30.00 annually for each of the member's registered representatives and principals for system processing.

[(6)] (7) 10% of a member's final annual renewal assessment or \$100, whichever is greater, with a maximum charge of \$5,000, if the member fails timely to pay the amount indicated on its preliminary renewal statement.

(c) through (l) No 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 the 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.

<sup>4</sup> At the NASD's request, the Commission made certain non-substantive, typographical changes to the proposed rule text to make it consistent with the current NASD rule text. Telephone conference between Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, and Christopher B. Stone, Special Counsel, Division of Market Regulation, Commission (July 22, 2003).

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

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

1. Purpose

The purpose of the proposed rule change to Section 4(b) is to (1) increase the \$10.00 charge for each set of fingerprints submitted by a member to NASD for processing to \$13.00; and (2) establish a \$13.00 charge to be paid to NASD for posting each set of fingerprint results and identifying information processed by another SRO on the Central Registration Depository ("CRD" or "Web CRD").

NASD currently processes fingerprint cards submitted by member firms on behalf of their associated persons who are required to be fingerprinted pursuant to the Act. Among other things, NASD collects the fingerprint cards, images them, links them to an associated person's CRD record, and forwards them to the Federal Bureau of Investigation ("FBI"). NASD tracks the status of these cards and posts the results of the FBI's fingerprint check on the CRD system.<sup>5</sup> NASD currently charges members \$10.00 for processing each fingerprint card and additionally collects \$22.00 from members on behalf of the FBI as appropriate, consistent with FBI guidelines.<sup>6</sup> The \$3.00 increase proposed in the rule change will raise NASD's fingerprint processing fee from \$10.00 to \$13.00 and, when the FBI's \$22.00 fee is included, will raise the total fingerprint processing fee from \$32.00 to \$35.00. The additional \$3.00 charge will help cover NASD costs associated with its fingerprinting program.

The proposed rule change also establishes a new \$13.00 fee to be charged by NASD to members that submit to NASD for posting to the CRD

<sup>5</sup> Generally speaking, results fall into one of three categories: "clear," "criminal history record information," or "illegible" (if the FBI could not "read" the images submitted). "Criminal history record information" ("CHRI") is defined in Section 28 of the Code of Federal Regulations as "information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system." In general terms, CHRI is composed of the results of a fingerprint check on a registered or associated person when information received from the FBI reflects an arrest history.

<sup>6</sup> The FBI determines when and on what basis it will charge the \$22.00 fee. For example, the FBI does not charge a fee on the submission of a second card when it identifies both the first and the second card as illegible for a particular individual.

system fingerprint results and identifying information that has been processed through another SRO. Pursuant to Section 17(f)(2) of the Act<sup>7</sup> and Rule 17f-2 thereunder,<sup>8</sup> other SROs may process fingerprint cards for persons required to have their fingerprints processed through the FBI, consistent with fingerprint plans submitted by those SROs to the Commission. NASD currently accepts the results (*i.e.*, the actual disposition/record sent by the FBI) of fingerprints processed through another SRO at no cost to the member. Consistent with Commission Rule 17f-2(b),<sup>9</sup> members may, under certain enumerated circumstances, submit such results in lieu of submitting fingerprint cards. Upon receipt of the results, NASD staff images and stores the documents received, verifies and matches the fingerprint processing results to an existing CRD record if available, and manually posts the results to the CRD system. In the event that the individual does not already have a CRD record, NASD staff would be required to create a new base record in the CRD system. NASD proposes charging members a \$13.00 fee to perform these activities. Because the FBI would have already processed these fingerprints, the member would have already paid the FBI fee, and NASD would not be charging the additional FBI fee under these circumstances.

NASD also proposes substituting the term "set of fingerprints" for "fingerprint cards." This proposed change describes the traditional ink and paper fingerprint cards in current use, but in recognition of the changing technology available for fingerprint processing, would also describe the electronic transmission of fingerprints.

The proposed fingerprint processing fees will be assessed starting on July 15, 2003.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Sections 15A(b)(5) of the Act,<sup>10</sup> which requires, among other things, the equitable allocation of reasonable dues,

<sup>7</sup> 15 U.S.C. 78q(f)(2).

<sup>8</sup> 17 CFR 240.17f-2.

<sup>9</sup> 17 CFR 240.17f-2(b). At the NASD's request, the Commission added the subparagraph (b) to the rule reference to clarify the "enumerated circumstances" being referred to by the NASD. Telephone conference between Richard E. Pullano, Associate Vice President and Chief Counsel, Registration and Disclosure, NASD, Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, and Christopher B. Stone, Special Counsel, Division of Market Regulation, Commission (July 22, 2003).

<sup>10</sup> 15 U.S.C. 78o-3(b)(5).

fees, and other charges among members and issuers and other persons using any facility or system that NASD operates or controls. NASD believes that the proposed fingerprint processing fees are reasonable and fairly reflect NASD's costs incurred in processing fingerprints and posting each set of fingerprint results and identifying information processed by another SRO on CRD.

*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 upon filing pursuant to Section 19(b)(3)(A)(ii)<sup>11</sup> of the Act and Rule 19b-4(f)(2) thereunder<sup>12</sup> as establishing or changing a due, fee, or other charge paid solely by members of the NASD. NASD intends to implement this rule change on July 15, 2003. 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.<sup>13</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 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

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

<sup>13</sup> See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

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 the NASD. All submissions should refer to File No. SR-NASD-2003-109 and should be submitted by September 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-48373; File No. SR-NASD-2003-123]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Institute an Hourly Maintenance Fee Associated with Use of the Nasdaq Workstation II Service by NASD Members**

August 20, 2003.

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 August 6, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. 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**

Nasdaq proposes to institute an hourly fee for maintenance services supplied for equipment used in connection with the Nasdaq Workstation™ II ("NWII") service.<sup>3</sup> Nasdaq proposes to implement the proposed rule change immediately.<sup>4</sup>

The text of the proposed rule change appears below. New text is in italics. Deleted text is in brackets.

\* \* \* \* \*

**7000. CHARGES FOR SERVICES AND EQUIPMENT**

**7010. System Services**

(a)-(e) No change

(f) Nasdaq Workstation™ Service

(1) The following charges shall apply to the receipt of Level 2 or Level 3 Nasdaq Service via equipment and communications linkages prescribed for the Nasdaq Workstation II Service:

Service Charge .....	\$2,035/month per service delivery platform ("SDP").
Display Charge .....	\$525/month per logon for the first 150 logons. \$200/month for each additional logon.
Additional Circuit/SDP Charge .....	\$3,235/month[*].
<i>PD and SDP Maintenance:</i>	
<i>Monthly maintenance agreement</i> .....	\$55/presentation device ("PD") logon or SDP/month.
<i>Hourly fee for maintenance provided without monthly maintenance agreement.</i>	\$195 per hour (two hour minimum), plus cost of parts.

A subscriber that accesses Nasdaq Workstation II Service via an application programming interface ("API") shall be assessed the Service Charge for each of the subscriber's SDPs and shall be assessed the Display Charge for each of the subscriber's logons, including logons of an NWII substitute or quote-update facility. API subscribers also shall be subject to the Additional Circuit/SDP Charge.

*A subscriber shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its SDP(s) by placing eight logons on an SDP and obtains an additional SDP(s); in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each "underutilized" SDP(s) (i.e., the difference between the number of SDPs a subscriber has and the number of*

*SDPs the subscriber would need to support its logons, assuming an eight-to-one ratio). A subscriber also shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its T1 circuits by placing eighteen SDPs on a T1 circuit; in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each "underutilized" SDP slot on the existing T1 circuit(s). Regardless of the SDP allocation across T1 circuits, a subscriber will not be subject to the Additional Circuit/SDP Charge if the subscriber does not exceed the minimum number of T1 circuits needed to support its SDP, assuming an eighteen-to-one ratio.*

(2) No change.

[\* A subscriber shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized

capacity on its SDP(s) by placing eight logons on an SDP and obtains an additional SDP(s); in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each "underutilized" SDP(s) (i.e., the difference between the number of SDPs a subscriber has and the number of SDPs the subscriber would need to support its logons, assuming an eight-to-one ratio). A subscriber also shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its T1 circuits by placing eighteen SDPs on a T1 circuit; in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each "underutilized" SDP slot on the existing T1 circuit(s). Regardless of the SDP allocation across T1 circuits, a subscriber will not be subject to the

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> This filing applies to persons that are NASD members. On August 6, 2003, Nasdaq also submitted a proposed rule change to implement an identical charge for non-members. See File No. SR-NASD-2003-124.

<sup>4</sup> In this filing, Nasdaq is also moving the text of the footnote to NASD Rule 7010(f) into the text of the rule to improve the clarity of the rule's presentation in the NASD Manual.