

2003-09 and should be submitted by March 31, 2003.

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. 34-47436; File No. SR-NASD-2003-26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend a Pilot Program Regarding the Regulatory Fee and the Trading Activity Fee

March 4, 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 February 28, 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 and II below, which Items have been prepared by the NASD. The NASD filed the proposal pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ 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 proposes to extend the pilot program for the Trading Activity Fee ("TAF") through April 1, 2003. The TAF pilot program is currently in effect, and is set to expire on March 1, 2003.⁶ NASD has requested that the Commission approve SR-NASD-2002-

148,⁷ so that the TAF will be made permanent before the expiration of the TAF pilot program on April 1, 2003. If the Commission does not approve SR-NASD-2002-148, the trading fee component of the member regulatory pricing structure will revert to Section 8 of Schedule A to the NASD By-Laws, as amended. The NASD is making no substantive changes to the pilot program, other than extending the expiration date through April 1, 2003.

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 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. The Association 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 July 24, 2002, the NASD filed SR-NASD-2002-98, which proposed a new member regulatory pricing structuring, including a new TAF, to replace the existing trading fee contained in Section 8 of Schedule A to the NASD By-Laws.⁸ The proposed rule change was effective upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act⁹ and Rule 19b-4(f)(2)¹⁰ thereunder. SR-NASD-2002-98 is currently in effect. Assessments under the new TAF were effective as of October 1, 2002, payable January 15, 2003.¹¹ On October 18, 2002, the NASD established a sunset provision whereby the TAF established in SR-NASD-2002-98 would cease to exist after December 31, 2002. At the

same time, the NASD filed SR-NASD-2002-148, which is substantially similar to SR-NASD-2002-98, but filed under Section 19(b)(1) of the Act, to allow for additional member comment. Upon expiration of SR-NASD-2002-98, the member regulatory pricing structure was to revert to Section 8 of Schedule A to the NASD By-Laws, as amended.

On December 24, 2002, the NASD extended the TAF pilot program through March 1, 2003. With the instant rule filing, the NASD is further extending the TAF pilot program through April 1, 2003, to allow additional time for the NASD to respond to comments to the original filing, and to allow the Commission more time to review issues presented by the permanent TAF proposed rule change (SR-NASD-2002-148). The NASD asks the Commission to approve SR-NASD-2002-148 before the expiration of the TAF pilot program on April 1, 2003, to make the TAF pilot permanent.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,¹² in general, and with Section 15A(b)(5) of the Act,¹³ 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 that the NASD operates or controls.

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. Written comments, however, have been solicited on SR-NASD-2002-98, SR-NASD-2002-147, SR-NASD-2002-148, and SR-NASD-2002-182. The comments are not addressed herein, but are, as appropriate, discussed in connection with the respective rule filings.

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

Because the foregoing proposed rule change does not:

¹² 15 U.S.C. 78o-3.

¹³ 15 U.S.C. 78o-3(b)(5).

⁷ See Securities Exchange Act Release No. 46817 (November 12, 2002), 67 FR 69785 (November 19, 2002)(SR-NASD-2002-148).

⁸ See Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002) (SR-NASD-2002-98). See also, Securities Exchange Act Release No. 46417 (August 23, 2002), 67 FR 55893 (August 30, 2002) (SR-NASD-2002-99). The NASD also published three *Notices to Members* describing the proposed changes and addressing interpretive questions posed by NASD members. See *Notices to Members* 02-41 (July 2002), 02-63 (September 2002), and 02-75 (November 2002).

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

¹¹ Member firms were required to pay the TAF in accordance with the pilot program (for the first quarter starting October 1, 2002) by no later than January 15, 2003, and thereafter on a monthly basis.

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).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The NASD asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. 17 CFR 240.19b-4(f)(6).

⁶ See Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002) (SR-NASD-2002-98). See also Securities Exchange Act Release No. 47112 (December 31, 2002), 68 FR 824 (January 7, 2003)(SR-NASD-2002-182).