

floor brokers and specialists trading listed securities.

The proposal also increases the monthly caps on transaction fees on orders sent through the Exchange's MAX® system, adds a new access charge for firms that send orders through the Exchange's MAX system and adds a new processing fee for certain transactions in OTC securities. The new access charge will apply to firms that send orders from outside the Exchange to the Exchange's MAX system and is designed to help defray the costs of maintaining system access. The new processing fee will apply to transactions by CHX floor brokers in OTC securities, when those securities are not traded by a CHX specialist, but where the floor broker transactions are processed by the Exchange's clearing systems.

Finally, this proposal revises references to certain Nasdaq charges and makes other clarifying changes. Specifically, the proposal updates references to Nasdaq's Tools of the Trade product to confirm that this product is now offered directly through Nasdaq and confirms that each of the Exchange's monthly transaction fee caps apply separately to different types of transaction charges.

The Exchange has proposed these fee changes in connection with the development of its 2003 operating budget and believes that these changes appropriately and equitably allocate among Exchange members the costs associated with providing various Exchange services and the overall costs associated with operating the Exchange. All of these changes to the Exchange's Schedule of Membership Dues and Fees are effective as of January 1, 2003.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>6</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

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

The CHX does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change establishes or changes a member due, fee or other charge, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>7</sup> and subparagraph (f)(2) of Rule 19b-4<sup>8</sup> thereunder.

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>9</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 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 CHX. All submissions should refer to File No. SR-CHX-2002-38 and should be submitted by February 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-1102 Filed 1-16-03; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47176; File No. SR-NASD-2003-01]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Refunds of Member Surcharges in Arbitration**

January 13, 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 January 2, 2003 the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution") 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 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**

The NASD is proposing to amend rule 10333(a) of the NASD Code of Arbitration Procedure to provide that, in certain circumstances, NASD will refund the member surcharge paid by a member firm named as a party to an arbitration proceeding (or where its employee/former employee has been named as a party). Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

\* \* \* \* \*

### **Code of Arbitration Procedure**

\* \* \* \* \*

### **10333. Member Surcharge and Process Fees**

#### **(a) Member Surcharge**

(1) Each member that is named as a party to an arbitration proceeding, whether in a Claim, Counterclaim, Cross-Claim or Third-Party Claim, shall be assessed a [non-refundable] surcharge pursuant to the schedule below when the Director of Arbitration perfects service of the claim naming the member on any party to the proceeding.

(2) For each associated person who is named, the surcharge shall be assessed

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>10</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>6</sup> 15 U.S.C. 78(f)(b)(4).