

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.⁵ 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.⁶ 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

system fingerprint results and identifying information that has been processed through another SRO. Pursuant to Section 17(f)(2) of the Act⁷ and Rule 17f-2 thereunder,⁸ 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),⁹ 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,¹⁰ which requires, among other things, the equitable allocation of reasonable dues,

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)¹¹ of the Act and Rule 19b-4(f)(2) thereunder¹² 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.¹³

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

⁵ 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.

⁶ 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.

⁷ 15 U.S.C. 78q(f)(2).

⁸ 17 CFR 240.17f-2.

⁹ 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).

¹⁰ 15 U.S.C. 78o-3(b)(5).

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

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