

the Nasdaq to all NNM and NSCM issuers.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD. Specifically, the Commission finds that the rule change is consistent with the provisions of Sections 15A(b) (5) and (6) of the Act.⁷ Section 15A(b)(5) requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees, and other charges among members, issuers and other persons using any facility or system which the NASD operates or controls. Section 15A(b)(6) requires in pertinent part that the rules of the NASD be designed to promote just and equitable principles of trade and not permit unfair discrimination between customers, issuers, brokers or dealers. The Commission believes that the revised NNM and NSCM fee structures, which affect the fees payable by issuers for listing additional shares, are consistent with the Act because they should serve to spread more evenly the costs of various issuer-related surveillance and educational initiatives among the issuers who may benefit from them.

IV. Conclusion

The Commission finds that the rule change is consistent with the Act, in general, and in particular with Sections 15A(b) (5) and (6) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-NASD-99-40) be, and hereby is, approved.⁹

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42280; File No. SR-NASD-99-72]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend the Effectiveness of the Pilot Injunctive Relief Rule

December 28, 1999.

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 December 15, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change as described in Items I and II below, which Items have been prepared by NASD Regulation. On December 28, 1999, NASD Regulation submitted Amendment No. 1 to the proposed rule change.³ For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rule 10335 of the Code of Arbitration ("Code") of the NASD, to extend the pilot injunctive relief rule for one year, pending Commission action on a rule filing to amend Rule 10335 and make it a permanent part of the Code. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

10335. Injunctions

(i) Effective Date

This Rule shall apply to arbitration claims filed on or after January 3, 1996. Except as otherwise provided in this Rule, the remaining provisions of the Code shall apply to proceedings instituted under this Rule. This Rule shall expire on [January 3, 2000] *January 5, 2001*, unless extended by the Association's Board of Governors.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, from Joan C. Conely, Senior Vice President and Corporate Secretary, NASD Regulation, dated December 23, 1999 ("Amendment No. 1").

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 Regulation 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 III below. NASD Regulation 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

Rule 10335 took effect on January 3, 1996 for a one-year pilot period. The Commission has periodically extended the initial pilot period in order to permit NASD Regulation's Office of Dispute Resolution to assess the effectiveness of the rule. The rule is currently due to expire on January 3, 2000. In July 1998, the NASD filed a rule filing proposing to amend Rule 10335 and to make it a permanent part of the Code. The NASD filed amendments and responses to comments received by the Commission regarding the rule filing in December 1998.

After considering additional comments received by the Commission regarding both the original rule filing and the amendments, as well as comments from the Commission staff, the Injunctive Relief Rule Subcommittee of NASD Regulation, Inc.'s National Arbitration and Mediation Committee ("NAMC") reconsidered every aspect of the proposed rule change.

After careful consideration of the comments received, the Subcommittee unanimously approved new amendments to the rule filing. The amendments were approved by the Board of NASD Regulation, Inc. at its meeting on December 8, 1999 and will be filed with the Commission shortly.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁴ which requires, among other things, that the Association rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect

⁷ 15 U.S.C. 78o-3(b) (5) and (6).

⁸ 15 U.S.C. 78s(b)(2).

⁹ In approving the proposal, the Commission has considered the rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 17 CFR 200.30-3(a)(12).

⁴ 15 U.S.C. 78o-3(b)(6).

investors and the public interest.⁵ NASD Regulation believes that it is in the interest of members and associated persons that the rule remain in effect pending the filing of amendments to, and Commission action on, the permanent rule filing.⁶ Therefore, the staff recommends that the pilot rule be extended to January 5, 2001. However, the permanent rule filing will make clear that, once approved, the permanent rule change would supersede the pilot in its entirety.

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

NASD Regulation 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

No written comments were solicited or received with respect to the proposed rule change.

III. 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.⁷ Persons making written submission 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-99-72 and should be submitted by January 28, 2000.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

NASD Regulation has requested that the Commission find good cause pursuant to Section 19(b)(2)⁸ for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. The commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A of the Act and the rules regulations thereunder.⁹ Rule 10335 is intended to provide a pilot system within the NASD arbitration forum to process requests for temporary injunctive relief. Rule 10335 is intended principally to facilitate the disposition of employment disputes, and related disputes, concerning members who file for injunctive relief to prevent registered representatives from transferring their client accounts to their new firms.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval will permit members to have the benefit of injunctive relief in arbitration pending filing of amendments to, and Commission action on, the permanent rule filing that would amend Rule 10335 and make it a permanent part of the Code. The Commission expects that during the extension of the pilot NASD Regulation will amend the proposal to permanently add Rule 10335 to the Code.¹⁰ The Commission believes, therefore, that granting accelerated approval of the proposed rule change is consistent with Section 15A of the Act.¹¹

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-NASD-99-72) is approved on an accelerated basis through January 5, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42304; File No. SR-NYSE-99-52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Extending the Pilot Fee Structure Governing the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Materials

December 30, 1999.

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 December 28, 1999, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") 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 the Exchange. 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 Exchange proposes to extend the effectiveness of the pilot fees ("Pilot Fee Structure") currently set forth in Exchange Rule 451, "Transmission of Proxy Material," and Exchange Rule 465, "Transmission of Interim Reports and Other Material," (collectively the "Rules"). The Rules provide guidelines for the reimbursement of expenses by NYSE issuers to NYSE member organizations for the processing and delivery of proxy materials and other issuer communications to security holders whose securities are held in street name. The Pilot Fee Structure is presently scheduled to expire on January 3, 2000. The Exchange proposes to extend the Pilot Fee Structure through February 15, 2000.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

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 Exchange included statements concerning the purpose of and basis for

⁵ See Amendment No. 1, *supra* note 3.

⁶ See Securities Exchange Act Release No. 40441 (September 15, 1998), 63 FR 50611 (September 22, 1998).

⁷ In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 15 U.S.C. 78o-3.

¹⁰ See *supra* note 6.

¹¹ 17 U.S.C. 78o-3.

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.