

area of loss allocation among GSCC dealers and brokers where their securities businesses are similar. Therefore, the Commission finds that the rule change is consistent with Section 17A of the Act and the rules and regulations thereunder.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-GSCC-2001-10) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46466; File No. SR-NASD-2002-100]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Establishment of a Late Fee in Connection with Member Payment of CRD Renewal Fees

September 6, 2002.

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 25, 2002, 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 8, 2002, 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 to the NASD By-Laws by establishing a late fee to be assessed against NASD members that fail timely to pay their yearly renewal fees to the Central Registration Depository ("CRD®" or "Web CRD<sup>SM</sup>"). The proposed late fee would be operative September 1, 2002. Below is the text of the proposed rule change. Proposed new language is in italics.

\* \* \* \* \*

#### Schedule A to the 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.

\* \* \* \* \*

#### Section 4—Fees

(a) No change.  
(b) NASD shall assess each member a fee of:

(1) Through (6) No change.  
(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 annual 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.

##### 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 is to amend Section 4(b) of

effectiveness was requested. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on August 8, 2002.

Schedule A to the NASD By-Laws by establishing a fee comprised of 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 annual renewal statement. As further detailed below, the proposed rule change is effective immediately upon filing and becomes operative on September 1, 2002.

NASD administers an annual renewal program that simplifies the process of renewing registrations and licenses for member firms and their associated persons by allowing members to pay a single amount to NASD in December of each year. This annual renewal fee covers all NASD registration and licensing fees and fees imposed by states and other self-regulatory organizations ("SROs"). NASD also collects broker-dealer and investment adviser renewal fees on behalf of SROs and state regulators, as applicable, through this program.

During the first week of November, NASD publishes on-line, on Web CRD, a Preliminary Renewal Statement for each member that advises the member of the total amount of renewal fees owed for the following year. The renewal fees are generally due to NASD by the end of the first week in December. Members currently pay the amount indicated on their Preliminary Renewal Statement by check or bank wire transfer, and NASD pays the fees to the various regulators by year-end. NASD advises its members that their failure to return full payment to NASD by the stated deadline could cause a member to become ineligible to do business in the jurisdictions in which it is registered as of the first business day of the new year. The timely payment of renewal fees by NASD members and their subsequent disbursement to appropriate regulators ensures that NASD members will not be precluded from conducting business in the next calendar year as a result of the non-payment of renewal fees.

Because of the potential risk to members' ability to conduct business if they fail timely to make their renewal payments, NASD engages in a comprehensive communications and operational effort beginning in August of each year that informs members of their obligation to complete the renewal process by the stated deadline and the risk associated with their failure to do so. These communications include an Advance Calendar of Key Dates, a Notice to Members, a CRD Bulletin, reminder e-mails, and daily reminder Broadcast Messages through CRD.

<sup>4</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>3</sup> See letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, Investor Protection, Market Integrity, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 8, 2002 ("Amendment No. 1"). In Amendment No. 1, NASD corrected the basis for which summary

In early January, NASD makes available on-line a Final Renewal Statement that reflects the final status of agent and firm registrations and/or Notice Filings as of December 31 of the previous year. Any adjustments in fees owed as a result of registration terminations or approvals subsequent to the Preliminary Renewal Statement are made in this final, reconciled statement on Web CRD. NASD issues a credit/refund to members that paid an amount greater than the final amount based on their Preliminary Renewal Statements. NASD assesses additional fees if a member paid less than the final reconciled amount.

Notwithstanding NASD's efforts to obtain timely payments of renewal fees, a significant percentage of NASD members miss the payment deadline each year, prompting NASD staff to expend additional time and resources to collect these fees after the renewal deadline has passed. NASD staff expends considerable effort to contact delinquent members to prevent them from failing to renew with the jurisdictions with which they are registered. This annual effort is in addition to, and detracts from, NASD's efforts to serve its members in the normal course of business.

NASD is therefore proposing that a late renewal fee be established and assessed against any NASD member that has not paid its renewal fees by the published deadline. NASD believes that such a fee would serve a two-fold purpose. It would provide members with an additional incentive to meet the renewals payment deadline, and it also would cover the costs of NASD collection activities (*i.e.*, the time and resources expended in contacting and collecting fees from NASD members that miss the deadline). The purpose of the proposed fee is not to generate significant net revenue, and it should not do so. Ideally, establishment of the late fee will encourage members to pay their renewal fees by the stated deadline and eliminate a significant number of late payments.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of sections 15A(b)(5) and 15A(b)(6) of the Act,<sup>4</sup> which require, among other things, the equitable allocation of reasonable dues, fees, and other charges among members and other persons using any facility or system that NASD operates or controls, and that NASD's rules must be designed to prevent fraudulent and manipulative acts and

practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed late renewal fee will encourage NASD members to pay their yearly renewal fees on a timely basis, since failure to do so could cause them to become ineligible to do business in jurisdictions where they are registered, effective the first business day of the new year. Reducing the number of members that do not timely pay their renewal fees will also reduce the time spent by NASD in collection efforts, thereby freeing NASD staff to serve NASD members in the normal course of business.

### *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 pursuant to section 19(b)(3)(A)(ii)<sup>5</sup> of the Act and Rule 19b-4(f)(2) thereunder<sup>6</sup> as establishing or changing a due, fee, or other charge paid solely by members of the NASD. 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>7</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 NASD. All submissions should refer to File No. SR-NASD-2002-100 and should be submitted by October 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46469; File No. SR-OCC-2002-02]

### Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Providing Clearing Services to Options Exchanges That Are Not Stockholders

September 6, 2002.

#### I. Introduction

On January 25, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-OCC-2002-02) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> On July 9, 2002, OCC amended the proposed rule change. Notice of the proposal was published in the **Federal Register** on July 31, 2002.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

#### II. Description

The proposed rule change amends OCC by-laws and rules so that OCC can provide clearing services to new options exchanges without having those exchanges become stockholders of OCC. Under OCC's existing by-laws, any new

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

<sup>7</sup> See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 46257 (July 25, 2002), 67 FR 49729.

<sup>4</sup> 15 U.S.C. 78o-3(b)(5) and 15 U.S.C. 78o-3(b)(6).