

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

The NASD is proposing to amend Sections 43(e) and 44(e) of the Code of Arbitration Procedure ("Code") to modify the non-refundable filing fee for industry parties when submitting claims, disputes or controversies which do not involve, disclose or specify monetary relief.

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 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

The Code presently provides in Section 43(a) that an industry claimant whose dispute, claim or controversy involves, discloses or specifies a money claim, regardless of the amount, must submit a non-refundable claim filing fee of \$500. However, the Code also provides in Sections 43(e) and 44(e) that any party, including public customers and industry parties, whose dispute, claim or controversy does not involve, disclose or specify monetary damages shall submit a non-refundable filing fee of only \$250.

The NASD has determined that there have been situations in which industry parties have purposely not disclosed the monetary amount of their claim in order to reduce the non-refundable fee from \$500 to \$250. Therefore, the NASD is proposing to amend Sections 43(e) and 44(e) of the Code to require that a uniform, non-refundable \$500 filing fee be assessed against all industry parties, regardless of whether the dispute, claim or controversy involves, discloses or specifies a money claim. However, Section 43(e) will retain the current claim-filing fee of \$250 for public customers whose dispute, claim or controversy does not involve, disclose, or specify a money-claim.

The NASD believes that the proposed rule change is consistent with the

provisions of Section 15A(b)(5)¹ of the Act, which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees and other charges among members, and the provisions of Section 15A(b)(6) of the Act, which require that the rules of the Association be designed to prevent fraudulent and manipulative acts, promote just and equitable principles of trade, and protect investors and the public interest, in that the proposed rule clarifies that the correct filing fee for industry parties in an arbitration case, regardless of whether an amount of claim is stated, is \$500, which prevents industry parties from unfairly and improperly avoiding the proper amount of fees to be assessed when filing a claim under the Code.

(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.

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) of the Act and subparagraph (e) of Rule 19b-4 thereunder in that it constitutes a due, fee or other charge.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 the file number in the caption above (SR-NASD-94-75) and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-35170; File No. SR-NASD-94-74]

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

December 28, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 8, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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 the NASD. The NASD has designated this proposal as one establishing or changing a fee under Section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. 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 a rule change to the Code of Arbitration Procedure amending Section 45(a) to adjust the surcharge on members applied to all new case filings from a flat rate to a graduated rate based on the amount in dispute. Proposed new language is in

¹ 15 U.S.C. § 78o-3.

italics; proposed deletions are in brackets.

Part III—Uniform Code of Arbitration

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Member Surcharge

Sec. 45.

(a) Each member who is named as a party to an arbitration proceeding, whether in a Claim, Counterclaim, Crossclaim or Third-Party claim, shall be assessed a [\$200] non-refundable surcharge pursuant to the schedule below when the Arbitration Department perfects service of the claim naming the member on any party to the proceeding. For each associated person who is named, the surcharge shall be assessed against the member or members which employed the associated person at the time of the events which gave rise to the dispute, claim or controversy. No member shall be assessed more than a single surcharge in any arbitration proceeding. The surcharge shall not be subject to reimbursement under Subsections 43(c) and 44(c) of the Code.

Amount in Dispute	Surcharge
\$.01—\$10,000	\$100
\$10,000.01—\$50,000	200
\$50,000.01—\$100,000	300
\$100,000.01—\$500,000	350
Over \$500,000	500

(b) For purposes of this Section, service is perfected when the Director of Arbitration properly serves the Respondents to such proceeding under Subsection 25(a) of the Code.

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 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

In early 1994, the NASD added new Section 45 to the Code requiring any member named as a party to an arbitration proceeding to be assessed a non-refundable, flat \$200 surcharge in

order to offset significantly increasing resourcing needs resulting from, among other things, case growth and increased arbitrator recruitment and training. However, the NASD has long recognized that the amount in dispute in arbitration cases and controversies is generally directly proportional to the amount of resources the NASD needs to expend in order to resolve the case or controversy.

In recognition of the fact that larger cases require greater resources, the NASD is proposing to replace the flat surcharge of \$200 in Section 45 with a graduated surcharge based on the amount in dispute, ranging from a low surcharge of \$100 for amounts in dispute not exceeding \$10,000 to surcharge of \$500 for amounts in dispute exceeding \$500,000.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,¹ which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees and other charges among members in that the proposed rule fairly adjusts the surcharge on members for new cases to more closely reflect the costs associated with resolving controversies involving varying amounts in dispute.

(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.

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) of the Act and subparagraph (e) of Rule 19b-4 thereunder in that it constitutes a due, fee or other charge.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the 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.

¹ 15 U.S.C. § 78o-3.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 the file number in the caption above and should be submitted by January 26, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-35171; File No. SR-NYSE-94-46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to the New York Stock Exchange's Specialist Combination Review Policy

December 28, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on December 9, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 self-regulatory organization. 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 proposed rule change consists of amendments to the New York Stock

² 17 CFR 200.30-3(a)(12)