

activities of the other Synergy Companies.<sup>6</sup> The rule change will add a section 2 to Rule 39 that provides that notwithstanding any affiliation between GSCC and any other entity, including any clearing agency, except as otherwise provided by written agreement between GSCC and such other entity, (1) GSCC shall not be liable for any obligations of such other entity and the clearing fund or other assets of GSCC shall not be available to such other entity and (2) such other entity shall not be liable for any obligations of GSCC and any assets of such other entity shall not be available to GSCC.

## II. Discussion

Section 17A(b)(3)(F) of the Act<sup>7</sup> requires that the rules of a clearing agency assure the safeguarding of securities and funds that are in the custody or control of the clearing agency or for which it is responsible. The Commission finds that the proposed rule change is consistent with GSCC's obligations under section 17A(b)(3)(F) because it should help ensure that GSCC's assets, including its participants fund, are not diminished as a result of its affiliation with the Synergy Companies.

## III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal 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.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-GSCC-2001-14) be, and hereby is, approved.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-2960 Filed 2-6-02; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>6</sup> The integration plan attempts to similarly insulate MBSCC and EMCC. Securities Exchange Act Release Nos. 45358 (Jan. 29, 2002) (order approving MBSCC's limitation of liability) and 45359 (Jan. 29, 2002) (order approving EMCC's limitation of liability). DTC and NSCC adopted rules similar to this proposed rule as part of their 1999 integration with DTCC. Securities Exchange Act Release Nos. 42013 (Oct. 15, 1999), 64 FR 57168 (Oct. 22, 1999) (order approving NSCC's limitation of liability) and 42014 (Oct. 15, 1999), 64 FR 57171 (Oct. 22, 1999) (order approving DTC's limitation of liability).

<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).

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

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45385; File No. SR-NASD-2002-05]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, Amendment No. 1, and Amendment No. 2 Thereto by the National Association of Securities Dealers, Inc. Relating to Revisions to Form U-4 and Form U-5

February 1, 2002.

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 9, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), 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 Regulation. On January 23, 2002, NASD Regulation submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> On January 31, 2002, NASD Regulation submitted Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.<sup>5</sup>

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Patrice M. Gliniecki, Vice President and Acting General Counsel, NASD Regulation, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), SEC, dated January 22, 2002 ("Amendment No. 1"). In Amendment No. 1, NASD Regulation: (1) removed all language from the original filing indicating that the filing was submitted pursuant to Section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A); and (2) amended the legends on the Forms to read "Rev. Form U-4 (3/2002)" and "Rev. Form U-5 (3/2002)," rather than "Rev. Form U-4 (7/2001)" and "Rev. Form U-5 (7/2001)."

<sup>4</sup> See letter from Patrice M. Gliniecki, Vice President and Acting General Counsel, NASD Regulation, to Katherine England, Assistant Director, Division, SEC, dated January 31, 2002 ("Amendment No. 2"). In Amendment No. 2, NASD Regulation renumbered the amendment to comply with Form 19b-4.

<sup>5</sup> NASD Regulation requested that the Commission make various technical corrections and delete a reference to "initial" registrations with regard to the Temporary Registration Acknowledgement (15C) described in the Signature and Acknowledgement Sections of the Purpose Section of this notice. Telephone discussion between Christopher B. Stone, Attorney Advisor, Division, SEC and Gary L. Goldsholle, Associate General Counsel, NASD Regulation, and Richard E. Pullano, Chief Counsel and Associate Director, CRD Public Disclosure, NASD Regulation (January 25, 2002).

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

NASD Regulation is proposing to revise the Uniform Application for Securities Industry Registration or Transfer ("Form U-4") and Uniform Termination Notice for Securities Industry Registration ("Form U-5") (collectively, the "Forms") to: (1) Make technical changes to accommodate the electronic submission of investment adviser filings in the Investment Adviser Registration Depository ("IARD<sup>SM</sup>") system; (2) establish procedures that will enable broker/dealer firms and investment adviser firms employing dually registered persons to concur with information contained in the Forms filed on such persons; (3) make the filing instructions clearer for all filers, but especially for those firms that are electronic filers; (4) provide separate paper filing instructions for certain investment adviser representative filers and other state-only filers that do not use the Central Registration Depository ("CRD<sup>®</sup>") or IARD systems; (5) clarify certain items that have been a source of confusion for users of the new Internet-based CRD system ("Web CRD<sup>SM</sup>"); (6) make certain formatting and technical changes to the Forms that would complete the transition from a paper-based filing model to an electronic-filing model; (7) update the Form U-4 to add examination and registration categories not previously included; and (8) amend NASD IM-8310-2, Release of Disciplinary Information, to refer to the newly numbered Section 14 of the Form U-4. The proposed technical and formatting amendments do not alter the reporting or disclosure requirements applicable to broker/dealers or their registered persons.

The text of the proposed rule change and the Exhibits related thereto are available at the principal offices of NASD Regulation 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, NASD Regulation 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 Regulation 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 Form U-4 is the Uniform Application for Securities Industry Registration or Transfer. Representatives of broker/dealers, investment advisers, or issuers of securities must use this form to become registered in the appropriate jurisdictions and/or with appropriate self-regulatory organizations ("SROs"). The Form U-5 is the Uniform Termination Notice for Securities Industry Registration. Broker/dealers, investment advisers, and issuers of securities must use this form to terminate registration of an individual in the various SROs and jurisdictions.

The proposed revisions to the Forms would (1) make technical changes to the Forms to accommodate the electronic submission of investment adviser filings in the IARD system; (2) establish procedures that will enable broker/dealer firms and investment adviser firms employing dually registered persons to concur with information contained in the Forms filed on such persons; (3) make the filing instructions clearer for all filers, but especially for those firms that are electronic filers; (4) provide separate paper filing instructions for certain investment adviser representative filers and other state-only filers that do not use the CRD or IARD systems; (5) clarify certain items that have been a source of confusion for Web CRD users; (6) make certain formatting and technical changes to the Forms that would complete the transition from a paper-based filing model to an electronic-filing model; (7) update the Form U-4 to add examination and registration categories not previously included; and (8) amend NASD IM-8310-2, Release of Disciplinary Information, to refer to the newly numbered Section 14 of the Form U-4. The proposed technical and formatting amendments do not alter the reporting or disclosure requirements applicable to broker/dealers or their registered persons.

On June 25, 1999, the Commission approved amendments to the Forms ("1999 Forms")<sup>6</sup> that included both technical and formatting changes in anticipation of the transition to Web CRD. Web CRD was deployed on August 16, 1999, and it became the primary

system for the registration of broker/dealers and their associated persons.<sup>7</sup>

Since the implementation of Web CRD, a task force comprised of the North American Securities Administrators Association, Inc. ("NASAA"), the states, the Commission, representatives from the securities industry, and other SROs (hereinafter referred to as the "Working Group"), has been examining the way in which Forms filings are processed. The consensus of the Working Group is that while an Internet-based electronic registration and termination process provides efficiencies that cannot be paralleled through a paper-filing model, additional efficiencies can be achieved by transitioning from a model designed for a paper filing system to a model that is specifically designed for an electronic filing process.

The current Forms, which were designed to be used in a paper-filing environment, are not completely compatible with an electronic filing environment. For example, the current paper Forms contain formatting and numbering inconsistencies that can be confusing to electronic filers. The proposed changes to the Forms are specifically designed to accommodate electronic filing and to take full advantage of an interactive filing environment. The proposed Forms have a revised format and separate instructions for electronic and paper filers.<sup>8</sup> The Forms will be available interactively to users on the Web CRD and IARD systems, and an identical static version of the Forms will be available in Portable Document Format ("PDF") on NASD Regulation's Web site.<sup>9</sup>

To provide useful information to Form filers, the Working Group has developed a "Uniform Forms Reference Guide" that, among other things: (1) Provides address and contact information for NASD Regulation and NASAA; (2) defines filing type

designations;<sup>10</sup> (3) and identifies the certifications from professional organizations that may make investment adviser representative applicants eligible for a waiver of the applicable state examination requirement.<sup>11</sup> The Working Group determined to separate the stand-alone reference guide from the Forms because of the nature of the information contained in it and to allow for convenient updates to the information as needed.

On April 5, 2000, the Commission proposed new rules that would, among other things, allow investment advisers to fulfill their filing obligations with federal and state regulators by filing electronically through a new Internet-based system—the IARD.<sup>12</sup> On July 28, 2000, the Commission formally designated NASD Regulation as the entity to establish and maintain the IARD system.<sup>13</sup> In consultation with the

<sup>10</sup> On Web CRD, firms can choose from seven Form U-4 filing types: (1) Initial or Transfer: for individuals who have never been registered on Web CRD or who have not previously been licensed/registered with a jurisdiction or SRO within thirty (30) days from the date of the current filing; (2) Amendment: to add or change information on an existing Form U-4; (3) Page 2 for BD Schedule A/B: for individuals who appear on Schedules A or B of the Form BD, providing personal, employment and residential information on Direct or Indirect Owners; (4) Page 2 Amendment for BD Schedule A/B: to add or change personal, employment or residential information on Direct or Indirect Owners; (5) DualRegistration: for individuals who intend to maintain registrations with two or more firms *not* under common ownership with the submitting firm; (6) Relicensing: for individuals who are registering with a new firm within thirty (30) days from their being registered with their previous firm in jurisdictions or SROs where they previously were registered; and (7) Concurrence Filing: to enable firms to concur with certain changes made to the Form U-4 of individuals who also are employed by another broker/dealer or investment adviser. Firms can choose from three Form U-5 filing types: (1) Full Form U-5: to terminate fully an individual from the firm; (2) Partial Form U-5: to terminate individuals from selected SROs/jurisdictions; and (3) Amendment Form U-5: to update or amend disclosure and/or residential information on an individual already terminated from a firm.

<sup>11</sup> An investment adviser applicant will be able to indicate on the Form U-4 whether he or she holds one of the five professional certifications (*i.e.*, Certified Financial Planner, Chartered Financial Consultant, Personal Financial Specialist, Chartered Financial Analyst, or Chartered Investment Counselor) recognized by jurisdictions. The IARD system will then use information provided by the certifying organization to verify that the individual has the indicated certification.

<sup>12</sup> See Investment Advisers Act Rel. No. 1862 (Apr. 5, 2000), 65 FR 20524 (Apr. 17, 2000).

<sup>13</sup> See Investment Advisers Act Rel. No. 1888 (July 28, 2000), 65 FR 47807 (Aug. 3, 2000). As noted in the Release, in 1996, Congress gave the Commission authority "to participate in an electronic system for the registration of investment advisers." As a result, Congress enacted Section 203(A)(d) of the Advisers Act, which enables the Commission to require investment advisers to file registration and other forms "through any entity

<sup>6</sup> See Exchange Act Rel. No. 41560 (June 25, 1999), 64 FR 36059 (July 2, 1999).

<sup>7</sup> For a description of the transition from the Legacy CRD system to Web CRD, see Exchange Act Rel. No. 41560 (June 25, 1999), cited at note 6 *supra*.

<sup>8</sup> Form U-4 filings generally will be made electronically through Web CRD or IARD. However, some individuals (*e.g.*, agents of issuers, filers with certain stock exchanges, certain investment advisers) may need to file the form on paper. The proposed Form U-4 suggests that filers contact state regulators or the appropriate SRO for clarification on filing status.

<sup>9</sup> PDF is a file format that allows for a representation or display of documents in a software manner that is independent of the original application hardware and operating system used to create those documents. NASD Regulation understands that NASAA also intends to make the PDF forms available on its Web site.

Commission and NASAA, NASD Regulation has built and begun to operate the IARD system. NASD Regulation administered a pilot program for the IARD system in October 2000, and it commenced full operation of the "firm" component of the IARD system in January 2001. The "firm" component of the IARD system allows investment adviser firms to file electronically Forms ADV and amendments thereto in the IARD system.

Currently, investment advisers must file hard copy Forms to register and terminate the registrations of investment adviser representatives with state regulators. Starting on March 18, 2002, NASD Regulation is scheduled to deploy the "individual" component of the IARD system, which will allow investment adviser firms to register and terminate electronically the registrations of their investment adviser representatives with appropriate state regulators. Individuals who are registered with both a registered investment adviser and a broker/dealer will share a single registration record on the CRD and IARD systems.<sup>14</sup>

NASD Regulation has been working closely with other members of the Working Group to propose revisions to the 1999 Forms that would best accommodate investment adviser representative registrations through an electronic filing process. NASAA approved the proposed Forms revisions in two steps: at its April 29, 2001 membership meeting, and on October 11, 2001, by an electronic vote of the NASAA membership.

(a) *Highlights of Proposed Changes*  
(i) *Section Headers Replace*

*Numbered Fields*

The proposed Forms eliminate the numbered field approach used in the 1999 (and previous) Forms. Because an electronic interactive filing system (and an "electronic form") presents information in a specified order, the need for numbered fields is eliminated. Instead, the proposed Forms contain 15 clearly identified, numbered section headers that describe the core categories of information elicited or action required by the applicant or firm, with

designated [by the Commission] for that purpose" and to "pay the reasonable costs associated with [these] filings." A description of the IARD system is provided in Investment Advisers Act Rel. No. 1862 (Apr. 5, 2000), cited in note 7 *supra*. Although the IARD system will function in a manner similar to Web CRD, NASD Regulation will not act as an SRO for investment advisers or investment adviser representatives.

<sup>14</sup> NASD Regulation does not regulate the registration of investment advisers or investment adviser representatives. As a vendor of the IARD system, NASD Regulation merely maintains and supports the IARD system.

applicable subquestions contained within each section. As a result of organizing the current fields into 15 sections, the question numbers have changed, but the questions have not been changed substantively, and, importantly, there are no changes to the questions eliciting information about disclosure events. For example, current Question 23, which elicits information about disclosure events, will change to Question 14, but the subquestions, now numbered 14A, 14B, etc. are the same as current subquestions 23A, 23B, etc. Applicants and firms will not be required to "re-file" disclosure information with the implementation of the revised Forms.

(ii) *Explanation of Terms and Specific Instructions*

The proposed revisions to the Explanation of Terms and Specific Instructions sections use "plain English" and change passive language to more active and instructive language wherever possible. The revisions to the Explanation of Terms section include the addition of seven new terms<sup>15</sup> and an alphabetical list of definitions to better aid applicants and firms. The Specific Instructions also include directions for Investment Adviser Representative-only applicants (*i.e.*, those individuals not also registered or seeking registration with a broker/dealer), as well as specific instructions for paper filers.

(iii) *Private Residence Check Box*

The General Information section of the proposed Forms contains a "private residence check box" that allows individuals to indicate that their office of employment address is a private residence. This field was added to address privacy concerns raised in connection with the potential release of this information to the public through public disclosure programs administered by the SEC, NASD, and the states. The investment adviser community has raised specific concerns about the public disclosure of the home addresses of investment advisers who are sole practitioners operating out of their homes.<sup>16</sup> A check in the "private

<sup>15</sup> The new terms are: affiliated, applicant, designated entity, filing firm, firm, firm CRD number, and individual CRD number.

<sup>16</sup> In December 2000, the Commission made a technical amendment to the Form ADV that added a check box for investment advisers whose employment address is a private residence. See Exchange Act Rel. No. 43758 (December 21, 2000), 65 FR 81737 (December 27, 2000). The amendment addressed comments received by the SEC in response to its April 2000 proposing release, Exchange Act Rel. No. 42620 (April 5, 2000), 65 FR 20524 (April 17, 2000), in which commenters expressed privacy concerns that home addresses might be disclosed through a regulator's public disclosure program.

residence check box" would enable regulators to block the release of an employment address that is a private residence through public disclosure programs. Regulators or firms will be able to view the employment address on Web CRD or IARD, whether or not the box is checked.

(iv) *Fingerprint Information*

The proposed Form U-4 contains a new "Fingerprint Information" section to address procedures for the submission of fingerprints by persons seeking registration as required under federal, SRO, or state rules.<sup>17</sup> This section includes a representation that affirms that an electronic filer seeking registration with a broker/dealer is submitting or will promptly submit fingerprint cards consistent with SRO rules.<sup>18</sup> The representation on current Question 8A regarding fingerprint exempt firms also has been modified to permit an applicant firm to represent that the subject of a filing is exempt from the fingerprint requirement if the applicant meets one or more of the exemptions established by Rule 17f-2 under the Exchange Act.<sup>19</sup> In addition, this section also addresses the applicable scenarios for filing of fingerprint cards by individuals who are

<sup>17</sup> Questions involving submission of fingerprints were contained in Question 8A on the 1999 Form U-4.

<sup>18</sup> See, e.g., NASD Rule 1140, Electronic Filing Rules. Under this rule, which was implemented with the deployment of Web CRD, NASD members have been required to submit fingerprint cards within 30 days of electronically filing Form U-4. Firms currently submit hard copy cards via U.S. Mail or other delivery service; however, the NASD is exploring the possibility of implementing an electronic fingerprinting process at some future time. Accordingly, this representation regarding submission of fingerprint cards has been drafted to accommodate technological changes that may allow for electronic submission of fingerprint cards at some future time. In addition, for these same reasons, the representation in former Question 8A that "[a]pplicant has submitted a fingerprint card through a CRD approved electronic method" has been deleted because it is subsumed in the new proposed representation.

<sup>19</sup> The representation in current Question 8A that "[a]pplicant is applying for registration with a Fingerprint Exempt firm" only covers the exemption under Rule 17f-2(a)(1) for entire firms. The proposed representation more clearly reflects the full set of potential exemptions available under Rule 17f-2, which not only permits an entity to claim an exemption for all of its associated persons (*e.g.*, a broker/dealer, registered transfer agent, or registered clearing agency) provided it qualifies for an exemption (*see* Rule 17f-2(a)(1)), but also permits exemptions for certain classes of partners, directors, officers or employees of any member of any national securities exchange, broker, dealer, registered transfer agent or registered clearing agent upon application to the Commission. NASD members have informed the NASD staff that it is difficult to fingerprint their associated persons who may be located in certain foreign countries; such member firms may wish to seek exemptive relief from the Commission for this class of employees under Rule 17f-2(a)(2).

filing only as investment adviser representatives.<sup>20</sup>

(v) *Dual Registration/Affiliated Firms*

The meaning of "dual registration" in Questions 9 and 10 on the 1999 Forms has caused some confusion for both regulators and member firms. A "yes" response to Question 9A on the current Form U-4 is intended to determine whether the applicant will maintain registrations with separately owned and unaffiliated broker/dealers. Current Question 10 is intended to elicit whether an individual is going to maintain registrations with affiliated firms. Users of the Form U-4, however, have found these two questions, as currently worded, to be confusing.

The rule change proposes that Questions 9 and 10 be placed into two sections: "Registration with Unaffiliated Firms" and "Registration with Affiliated Firms." "Registration with Unaffiliated Firms" clearly states that individuals who answer this question will be considered to be "dually registered," and that the individual/firm should consult applicable rules because some jurisdictions do not permit dual registrations.<sup>21</sup> "Registration with Affiliated Firms" applies to individuals registering with firms that are under common ownership or control.<sup>22</sup>

(vi) *Registration Categories and Examination Requests*

The proposed Forms add: (1) A new registration category for the International Securities Exchange ("ISE");<sup>23</sup> (2) new registration categories for the New York Stock Exchange ("NYSE") Trading Assistant ("TA") and Specialist Clerk ("SC") positions;<sup>24</sup> and (3) a registration category for the Private Placement

("PR") position as required by the Gramm-Leach-Bliley Act.<sup>25</sup> The position described as General Securities and Options Representative has been omitted from the proposed Forms because it was included in error when the Forms were revised in 1999.

The proposed Forms also add: (1) A Series 7A examination that corresponds with the Floor Member Conducting Public Business ("PM") registration category;<sup>26</sup> (2) a NYSE Branch Manager Series 12 examination that corresponds with the Securities Manager ("SM") registration category;<sup>27</sup> (3) a Series 21 examination that corresponds with the NYSE SC registration category;<sup>28</sup> (4) a Series 25 examination that corresponds with the NYSE TA registration category;<sup>29</sup> (5) a National Futures Association ("NFA") Financial Instruments examination (Series 33) for individuals registered as a General Securities Representative with the NASD, or who limit their futures activities to soliciting or accepting customer orders for futures or options involving stock index, currency or interest rate products;<sup>30</sup> (6) a limited representative-private securities offering examination (Series 82) that corresponds to the PR registration category discussed above;<sup>31</sup> and (7) a new continuing education regulatory element (Series 106) for Series 6 registered persons.<sup>32</sup> The new Forms omit the Series 47 examination, originally anticipated for individuals

<sup>25</sup> The PR position was implemented in May 2001 as required by the Gramm-Leach-Bliley Act of 1999, which added a new subsection (j) to Section 15A of the Exchange Act and created a new NASD registration category for individuals engaged only in private securities offerings. See Section 203, P.L. 102, Gramm-Leach-Bliley Act (Nov. 12, 1999).

<sup>26</sup> See Exchange Act Rel. No. 32698 (July 29, 1993), 58 FR 41539 (August 4, 1993) in which the Commission approved the NYSE proposed rule change to adopt the Series 7A examination as a module of the Series 7 examination for floor members who only accept orders from professional customers, and to establish a new registration category. See also Exchange Act Rel. No. 44790 (September 13, 2001), 66 FR 48502 (September 20, 2001), in which the Commission recently approved the Series 7A examination for Pacific Stock Exchange floor members.

<sup>27</sup> See Exchange Act Rel. No. 39577 (January 23, 1988), 63 FR 4513 (January 29, 1988) in which the NYSE proposed adding a firm element for supervisors by including the Series 12 examination for branch managers in the supervisor category.

<sup>28</sup> See note 22 *supra*.

<sup>29</sup> See note 22 *supra*.

<sup>30</sup> Including this NFA-sponsored examination on the proposed Form will allow member firms to request this examination without having to request it on the Form U-10 (the Uniform Examination Request for Non-NASD Candidates).

<sup>31</sup> See note 20 *supra*.

<sup>32</sup> See NASD Notice to Members 01-71. See NASD Rule 1120, which permits the NASD to designate continuing education regulatory elements for various registration categories.

with a Japanese-limited general securities (JP) registration position.<sup>33</sup>

(vii) *Professional Designations Section*

The proposed Form U-4 adds Section 8, "Professional Designations," to enable an individual requesting registration as an investment adviser representative to seek a waiver from examinations if he or she currently maintains certain designations.<sup>34</sup> The instructions on the Form U-4 state that this is an optional field that will only be used by individuals who seek the applicable waiver.

(viii) *Signature and Acknowledgment Sections*

To accommodate electronic filing, proposed Section 15, the "Signatures" section, defines a "signature" as either "a manual signature or an electronically transmitted equivalent." This section permits individuals and appropriate signatories to go directly to designated signature fields to execute the electronic signatures required by the Forms. Proposed Sections 15A and 15B address the individual/applicant's acknowledgment and consent and the firm/appropriate signatory's representations, both of which must be completed on all initial or temporary registration form filings. Section 15C addresses the Temporary Registration Acknowledgment (15C), which must be completed for all temporary registrations. Section 15D has been added to address an individual/applicant's acknowledgment and consent to amendments to the disclosure questions or the Disclosure Reporting Pages ("DRPs"). Firms and appropriate signatories must complete Section 15E for all amendment form filings. In addition, the signature section includes the Firm/Appropriate Signatory Concurrence (15F), which is a new signature section that enables one firm to "concur" with a filing made by another firm with which an individual is also registered (*i.e.*, the individual is registered with more than one broker/dealer and/or investment adviser firm).

The proposed changes to the Form U-5 combine the signatures into Section 8, which includes the firm acknowledgment in Section 8A and the individual acknowledgment and consent in Section 8B. Only appropriate signatories of firms are required to sign the Form U-5; however, if the terminating firm reports on the Form U-5 that an individual is under internal review, that individual may file a Part

<sup>33</sup> Although the Commission approved the JP registration category (see Exchange Act Rel. No. 37112 (April 12, 1996), 61 FR 17339 (April 19, 1996)), this examination has not yet been implemented.

<sup>34</sup> See note 7 *supra*.

<sup>20</sup> Not all jurisdictions currently require the submission of fingerprint cards for investment adviser representatives. Accordingly, the proposed Form U-4 permits filers to make appropriate representations, through the use of radio buttons (*i.e.*, defined fields or sections within the system that users can click on), for their particular circumstances.

<sup>21</sup> The "Registration with Affiliated Firms" section defines the majority view of states with respect to the "dual registration" issue. Based on information provided by the states, 28 states do not allow a person to be registered with unaffiliated entities. A list of those states may be found on the NASD Regulation Web site at [http://www.nasdr.com/pdf/text/statefee\\_sch.pdf](http://www.nasdr.com/pdf/text/statefee_sch.pdf).

<sup>22</sup> The term *affiliated* is defined in the "Explanation of Terms" section of the Form BD as "under common ownership or control."

<sup>23</sup> See Exchange Act Rel. No. 42455 (Feb. 24, 2000), 65 FR 11388 (March 2, 2000), in which the Commission approved the International Securities Exchange as a national securities exchange.

<sup>24</sup> See Exchange Act Rel. No. 40943 (January 13, 1999), 64 FR 3330 (January 21, 1999) and Exchange Act Rel. No. 41701 (August 3, 1999), 64 FR 43804 (August 11, 1999) in which the Commission approved the Trading Assistant and Specialist Clerk positions, respectively.

II to the Internal Review DRP to provide a response.<sup>35</sup> In addition, unregistered individuals are obligated to report to CRD any address changes for two years following the termination of registration.<sup>36</sup> The individual acknowledgment and consent is included in the proposed changes to the Form U-5 to require individuals submitting an address change or an Internal Review DRP-Part II to attest that the information is accurate and complete.

(ix) *Firm/Appropriate Signatory Concurrence Section*

Investment adviser representatives who are also registered with one or more broker/dealers will share a single registration record on the CRD/IARD systems.<sup>37</sup> Therefore, a single event may trigger Form U-4 filing obligations by more than one investment adviser and/or broker/dealer. As noted above, Section 15F provides a mechanism by which a broker/dealer may indicate that it concurs with information filed by an investment adviser regarding a representative who is registered with both entities, and vice versa.

The CRD and IARD systems would send an electronic notice to an employer broker/dealer or investment adviser that another broker/dealer or investment adviser that also employs that individual has submitted a Form U-4 for one of its associated persons. The investment adviser or broker/dealer would then be able to review the information that has been submitted. If the firm agreed that the information was correctly reported, it would make a "concurrence filing," which would communicate to the CRD system (and, therefore, all appropriate regulators) that it had adopted the filing as its own. Firms would not be required to make concurrence filings where the filing

amends information that is relevant only to the broker/dealer or investment adviser that initially filed the Form U-4 (e.g., such firms would not be required to submit concurrence filings for changes to registrations, office of employment address, etc. that are specific to the entity making the initial filing).

NASD Regulation believes that concurrence filings will be made in the vast majority of cases involving individuals who are registered with multiple firms (whether they are broker/dealers or investment advisers). In the event that multiple firms associated with any particular individual submit different DRPs reporting the same disclosure event, NASD Regulation staff would "flag" the affected record on the CRD/IARD systems. This would identify on the system that a difference exists, and it would immediately put regulators and the involved firms on notice that a difference exists. The Working Group has determined that the "difference flag" will be set whenever there is a change to any of the information provided in any of the fields eliciting objective factual information (i.e., all of the DRP fields, with the exception of the last field on the DRP, which is reserved for the registered representative's summary or commentary on the event). The Working Group determined to set the "difference flag" pursuant to these criteria to eliminate subjective determinations by NASD staff in identifying such differences.

When a difference is flagged, NASD Regulation staff will alert the firms involved to request that they resolve the difference. If the firms are not able to reach an agreement within 30 calendar days, NASD Regulation staff will refer the matter to a state regulator and/or NASD Regulation's Member Regulation or Enforcement staff, as appropriate, based on the facts and circumstances of the situation, for review and resolution.<sup>38</sup> NASD Regulation also will implement procedures to ensure that a public investor (or other person) who requests a public disclosure report before the difference is resolved is made

aware of the conflicting or inconsistent information. Specifically, NASD Regulation intends to provide to such a requestor a public disclosure report that contains both versions of the information submitted whenever such a difference has been identified.<sup>39</sup> This process of permitting broker/dealers and investment advisers to concur with filings submitted by another broker/dealer or investment adviser should make it more efficient for firms to comply with their reporting obligations.<sup>40</sup>

## 2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of section 15A(b)(6)<sup>41</sup> of the Act, which requires, among other things, that the Association's rules 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 Regulation believes that the proposed rule change is designed to accomplish these ends by making technical changes to the Forms to accommodate the electronic submission of investment adviser filings on the IARD system; establishing procedures that will enable broker/dealer firms and investment adviser firms employing dually registered persons to concur with information contained in the Forms; making certain formatting and technical changes to the Forms that would complete the transition from a paper-based filing model to an electronic-filing model; providing separate paper filing instructions for those filers that do not

<sup>35</sup> With the exception of Part II of the Form U-5 Internal Review DRP, there is currently no mechanism for a former associated person or member to submit information to amend or update a disclosure record through the use of the Forms. Part II of the Form U-5 Internal Review DRP provides a current or former registered representative an opportunity to provide a summary of the circumstances relating to an internal review reported on a Form U-5 by a former employer.

<sup>36</sup> See generally Article V, Section 4 of the NASD By-Laws, Forms U-4 and U-5, and Notice to Members 97-31.

<sup>37</sup> NASD Regulation is scheduled to deploy the investment adviser representative component of the IARD system on March 18, 2002. With the deployment of this component of the system, investment advisers will be able to submit Forms U-4 and U-5 electronically to register and terminate the registrations of their investment adviser representatives with appropriate state regulators. Individuals who are registered with both a registered investment adviser and a broker/dealer will share a single registration record on the CRD and IARD systems.

<sup>38</sup> Referrals to NASD Regulation's Member Regulation or Enforcement Department would be made only in cases where a member firm is involved (e.g., when a difference is identified between filings made by two broker/dealer member firms or between filings made by a broker/dealer member firm and an investment adviser firm that is registered with a state). If NASD staff identifies a difference between filings made by two non-member investment adviser firms, a referral will be made to states in which those firms are registered. Where investment adviser firms are registered in multiple states, the Working Group has indicated that referrals would be made to the state where the investment adviser firm's principal place of business is located.

<sup>39</sup> NASD Regulation believes that it is unlikely that there will be many cases involving these types of differences. The universe of individuals who are registered with both a broker/dealer and an unaffiliated investment adviser is small relative to the number of individuals who maintain investment adviser registrations with a firm that is registered both as a broker/dealer and an investment adviser. NASD Regulation does not expect firms that are registered both as a broker/dealer and an investment adviser to submit differing reports about the same event. NASD Regulation further expects that any differences will be quickly resolved, given that both investment advisers and broker/dealers are subject either to state or NASD rules and regulations that require complete and accurate reporting on the Forms.

<sup>40</sup> The proposed language in the General Instructions under Section 15F states: "This section must be completed to concur with a U-4 filing made by another firm (IA/BD) on behalf of an individual who is also registered with that other firm (IA/BD)." Because this addition is exclusive to the electronic form, the Specific Instructions for Paper Filers states that Section 15F does not apply to paper filers; consequently, a paper filer would be required independently to submit hard copy filings to states and would not be able to use the electronic concurrence filing mechanism.

<sup>41</sup> 15 U.S.C. 78o-3(b)(6).

use the CRD or IARD systems; clarifying certain items that have been a source of confusion for WebCRD users; and updating the Forms to add examination and registration categories that were not previously included.

#### *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.

#### *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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the NASD consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

### 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-2002-05 and should be submitted by February 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>42</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-2959 Filed 2-6-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45379; File Nos. SR-NASD-2001-64 and SR-NASD-2001-68]

### Self Regulatory Organizations; Order Granting Approval of Proposed Rule Changes by the National Association of Securities Dealers, Inc., To Adjust the Fees Charged to NASD Non-Members for the Use of the Nasdaq National Market Execution System and the SelectNet Service

January 31, 2002.

#### I. Introduction

On September 28, 2001, the National Association of Securities Dealers, Inc. ("NASD") through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") 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> a proposed rule change to adjust the fees charged to NASD non-members for the use of the Nasdaq National Market Execution System ("NNMS" or "SuperSOES") and the SelectNet Service.<sup>3</sup> On October 4, 2001, Nasdaq filed a second proposed rule change to increase the per share charge for use of SuperSOES on a pilot basis.<sup>4</sup> The Commission received three comment letters on the proposals.<sup>5</sup> This order approves the proposed rule changes.

<sup>42</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 Securities Exchange Act Release No. 44898 (October 2, 2001), 66 FR 51703 (October 10, 2001) (File No. SR-NASD-2001-64). See also Securities Exchange Act Release No. 44899 (October 2, 2001) (File No. SR-NASD-2001-63, which applied the new fees to NASD members, effective upon filing, and was implemented on October 1, 2001).

<sup>4</sup> See Securities Exchange Act Release No. 44914 (October 9, 2001), 66 FR 52649 (October 16, 2001) (File No. SR-NASD-2001-68). See also Securities Exchange Act Release No. 44910 (October 5, 2001) (File No. SR-NASD-2001-67, which applied these pilot changes to NASD members, effective upon filing, for a pilot period from November 1, 2001 through October 31, 2002).

<sup>5</sup> See Letter from Meyer S. Frucher, Chairman and Chief Executive Officer, Philadelphia Stock Exchange, Inc. ("Phlx") to Jonathan G. Katz, Secretary, Commission, dated October 31, 2001

## II. Description of the Proposals

### A. SR-NASD-2001-64

In SR-NASD-2001-64, Nasdaq proposes to adjust the fees for SelectNet and the NNMS for NASD non-members and consolidate the rules governing these fees into NASD Rule 7010(i).<sup>6</sup> First, Nasdaq proposes to replace the current order execution charge in the NNMS, which is based on the number of orders executed per month, with a \$0.001 per share charge for execution of orders through the NNMS. Second, Nasdaq proposes to impose a \$0.10 order entry charge on orders in both the NNMS and SelectNet.

Third, Nasdaq proposes to modify the charges for order execution in SelectNet to reflect its transformation, in connection with the implementation of the NNMS, into a system that is intended to be used primarily for the delivery of negotiable, non-liability orders to market makers and electronic communication networks that participate in the NNMS.<sup>7</sup> Nasdaq will charge \$0.90 per execution for the first 25,000 liability orders executed in a month, \$0.60 per execution for the next 25,000 liability orders executed, \$0.10 per execution for the next 200,000 liability orders executed, and will assess no order-execution charge for the remaining liability orders executed in a month. In addition, Nasdaq will charge a fee of \$0.90 per execution for all non-liability orders executed.

### B. SR-NASD-2001-68

In this filing, Nasdaq proposes to increase the per share charge for orders entered and executed in the NNMS from \$0.001 per share to \$0.002 per share, in keeping with Nasdaq's ongoing efforts to

("Phlx Letter"); Letter from Michael T. Dorsey, Senior Vice President, General Counsel and Secretary, Knight Trading Group, Inc. to Jonathan G. Katz, Secretary, Commission, dated November 2, 2001 ("Knight Letter"); and Letter from Michael Bird, Chairman, Trading Issues Committee, Security Traders Association, to Jonathan G. Katz, Secretary, Commission, dated November 6, 2001 ("STA Letter").

<sup>6</sup> SR-NASD-2001-63 applied the same fees to NASD members, effective upon filing, and was implemented on October 1, 2001.

<sup>7</sup> Under current rules, SelectNet may still be used for liability orders by (i) national securities exchanges trading Nasdaq-listed securities pursuant to grants of unlisted trading privileges ("UTP Exchanges") that choose not to participate in the automatic execution functionality of the NNMS, and (ii) other market participants directing orders to market participants that choose not to participate in the automatic execution functionality of the NNMS. The NASD filed a proposed rule change to prohibit UTP Exchanges that do not participate in the NNMS from using SelectNet. See Securities Exchange Act Release No. 45319 (January 18, 2002), 67 FR 3923 (January 28, 2002).