

member) an order for the account of broker A (or another broker-dealer), broker B will be charged the \$.10 fee.

2. Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) of the Act that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.⁶

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

The proposed rule change does not impose 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing amended rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(2)⁸ thereunder. At any time within 60 days of the filing of such amended 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.

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 Section. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR-ISE-2002-29 and should be submitted by January 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47054; File No. SR-NASD-2002-171]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to NASD's Minor Rule Violation Plan

December 19, 2002.

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 November 29, 2002 the National Association of Securities Dealers, Inc. ("NASD") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. 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 to amend Interpretative Material 9216 ("IM-

9216") to clarify that a failure to timely file annual audit reports is eligible for disposition under the NASD's Minor Rule Violation Plan ("MRVP" or the "Plan"). The text of the proposed rule change is available at the office of the secretary of the NASD, 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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to clarify that a failure to timely file annual audit reports is appropriate for disposition under the NASD's MRVP. As described in more detail herein, the NASD believes that the current rule language in IM-9216 referring to Rule 17a-5 under the Act does not clearly reflect that a failure to timely file annual audit reports is included in the NASD's MRVP.

In 1984, the SEC adopted amendments to Rule 19d-1(c) under the Act⁵ to allow self-regulatory organizations to adopt, with SEC approval, plans for the disposition of minor violations of rules.⁶ In 1993, pursuant to Rule 19d-1(c), the NASD established an MRVP,⁷ which is currently set forth in NASD Rule 9216. In 2001, the SEC approved amendments to the NASD's MRVP.⁸

NASD Rule 9216(b) authorizes the NASD to impose a fine of \$2,500 or less on any member or associated person of a member for a violation of any of the rules specified in NASD IM-9216. The number and seriousness of the violations, as well as the previous disciplinary history of the respondent, is reviewed to determine if a matter is

⁵ 17 CFR 240.19d-1(c).

⁶ See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23833 (June 8, 1984).

⁷ See Securities Exchange Act Release No. 32076 (March 31, 1993), 58 FR 18291 (April 8, 1993). See also *Notice to Members* 93-42 (July 1993).

⁸ See Securities Exchange Act Release No. 44512 (July 3, 2001), 68 FR 36812 (July 13, 2001).

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 19b-4(f)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

appropriate for disposition under the MRVP and to determine the amount of the fine. Once the NASD has brought a minor violation of a rule against an individual or member firm, the NASD may, at its discretion, issue progressively higher fines for all subsequent minor violations of rules within the next 24-month period or initiate more formal disciplinary proceedings.

The purpose of the MRVP is to provide for a meaningful sanction for the minor or technical violation of a rule when the initiation of a disciplinary proceeding through the formal complaint process would be more costly and time-consuming than would be warranted. Inclusion of a rule in the NASD's MRVP does not mean it is an unimportant rule; rather, a minor or technical violation of the rule may be appropriate for disposition under the MRVP. The NASD retains the discretion to bring full disciplinary proceedings.

As stated above, in 2001, the NASD amended the MRVP to include additional violations. One of these violations is listed in IM-9216 as "SEC Exchange Act Rule 17a-5—failure to timely file FOCUS reports." In the Notice of Filing of Proposed Rule Change adding SEC Rule 1a-5 to the NASD's MRVP, the SEC, referring to language in the NASD's filing, stated that the NASD "proposes to institute minor rule violations for failure of a member to timely file monthly, quarterly, and annual reports required by SEC Rule 17a-5, also known as FOCUS reports."⁹ Rule 17a-5 requires that firms file both FOCUS reports and annual audit reports; however, for purposes of the NASD's MRVP, an annual audit report currently is defined as being included in the term "FOCUS reports." As a result, the NASD believes that the MRVP may not clearly reflect that a failure to timely file annual audit reports, as well as FOCUS reports, under Rule 17a-5 is proper for disposition as a minor rule violation. The NASD therefore is proposing this rule change to clarify that a failure to timely file annual audit reports is encompassed within the MRVP.

⁹ See Securities Exchange Act Release No. 43330 (September 22, 2000), 65 FR 58585 (September 29, 2000). This statement is also repeated in *Notice to Members* 01-54 (August 2001), which announced the SEC approval order.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,¹⁰ which requires, among other things, that the 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. The NASD believes that this proposed rule change is necessary to clarify that a failure to timely file annual audit reports is included in the NASD's MRVP.

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.

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) of the Act¹¹ and Rule 19b-4(f)(6)¹² thereunder because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which the proposed rule change was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act,¹³ 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.

As required, the NASD filed its notice of intent to file the proposed rule change on November 12, 2002. The

NASD also requested that the Commission waive the 30-day operative date. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the NASD to continue to proceed under its MRVP for failure to file annual audit reports without interruption. Thus, the foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act¹⁴ and subparagraph (f)(6) of Rule 19b-4.¹⁵ 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.

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 at 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 No. SR-NASD-2002-171 and should be submitted by January 21, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

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¹⁰ 15 U.S.C. 78o-3(b)(6).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4.

¹⁶ 17 CFR 200.30-3(a)(12).