

Closed Meetings will be held on Wednesday, March 5, 2003 at 10 a.m., and on Thursday, March 6, 2003 at 10 a.m.

Commissioner Campos, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Wednesday, March 5, 2003 will be:

Formal orders of investigation;

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions;

Adjudicatory matter; and

Amicus consideration.

The subject matter of the Closed Meeting scheduled for Thursday, March 6, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions; and

Adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: February 26, 2003.

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47392; File No. SR-NASD-2003-19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Amendment to NASD Interpretive Material 2260 ("IM-2260")

February 21, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and rule 19b-4² thereunder, notice is hereby given that on February 13, 2003, the National Association of Securities Dealers, Inc. ("NASD") 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 NASD. 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 proposes to amend NASD Interpretive Material 2260 ("IM-2260") relating to their approved rates of reimbursement for expenses incurred in forwarding proxy material, annual reports, information statements, and other material.

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deleted language is [bracketed].

* * * * *

IM-2260. [Suggested] *Approved Rates of Reimbursement*

(a) The [Board of Governors has determined that the] following [suggested] *approved* rates of reimbursement for expenses incurred in forwarding proxy material, annual reports, information statements and other material [are to be used as a guide by members:] *shall be considered reasonable rates of reimbursement. In addition to the charges specified in this schedule, members also are entitled to receive reimbursement for: (1) actual postage costs (including return postage at the lowest available rate); (2) the actual cost of envelopes (provided they are not furnished by the issuer, the trustee, or a person soliciting proxies); and (3) any actual communication expenses (excluding overhead) incurred*

in receiving voting returns either telephonically or electronically.

(1) Charges for Initial Proxy and/or Annual Report Mailings

(A) [60] 40 cents for each set of proxy material, *i.e.*, proxy statement, form of proxy and annual report when mailed as a unit, *unless an opposition proxy statement has been furnished to securities holders,*³ [plus postage,] with a minimum of \$5.00 for all sets mailed;

(B) [20] 15 cents for each copy, plus postage, for annual reports, which are mailed separately from the proxy material pursuant to the instruction of the person soliciting proxies *with a minimum of \$3.00 for all sets mailed;*.]

(C) \$1.00 for each set of proxy material, *i.e.*, proxy statement, form of proxy and annual report when mailed as a unit, for a meeting for which an opposition proxy statement has been furnished to security holders, with a minimum of \$5.00 for all sets mailed;

(D) NASD has approved, as fair and reasonable, the following supplemental proxy fees for intermediaries that coordinate multiple nominees: \$20.00 per nominee plus (i) 10 cents for each set of proxy material, with respect to issuers whose shares are held in fewer than 200,000 nominee accounts, or (ii) 5 cents for each set of proxy material, with respect to issuers whose shares are held in at least 200,000 nominee accounts.

(2) Charges for Proxy Follow-Up Mailings

[(A)] 40 cents for each set of follow-up material, plus postage[, when the follow-up material is mailed to all beneficial owners;].

[(B)] 60 cents for each set of follow-up material, plus postage, when the follow-up material is mailed only to beneficial owners who have not responded to the initial mailing.]

[(3) Surcharge for Proxy Solicitation

Eighteen and one-half cents for each set of proxy material, *i.e.*, proxy statement, form of proxy and annual report when mailed as a unit, for the period from April 1, 1986 to March 31, 1987 as a surcharge in addition to the appropriate charges specified herein.]

³ NASD represents that there was an error in the proposed rule language in its original 19b-4 filing. The phrase "unless an opposition proxy statement is furnished to security holders," should have been underlined to indicate proposed new rule language. Telephone conversation between Shirley H. Weiss, Associate General Counsel, NASD, and Sapna C. Patel, Attorney, Division of Market Regulation, Commission, on February 21, 2003.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

[(4)] (3) [Additional Fee for Proxy Solicitation] *Charge for Providing Beneficial Ownership Information*

Six and one-half cents per [shareholder] name of non-objecting beneficial owner provided to the issuer pursuant to the issuer's request. *Where the non-objecting beneficial ownership information is not furnished directly to the issuer by the member, but is furnished through an agent designated by the member, the issuer will be expected to pay the reasonable expenses of the agent in providing such information, in addition to the rate described above. (See SEC rules 14a-13(b) and 14c-7(b) under the Securities Exchange Act of 1934 and notes thereto.)*

Any member that designates an agent for the purpose of furnishing requesting issuers with beneficial ownership information pursuant to SEC rule 14b-1(c) and thereafter cancels that designation or appoints a new agent for such purpose should promptly inform interested issuers.

[(5)] (4) Charges for Interim Report, Post Meeting Report and Other Material Mailings

[30] 15 cents for each copy, plus postage, for interim reports, post meeting reports, or other material with a minimum of \$2.00 for all sets mailed.

[(6)] (5) *Incentive Fees*

An "incentive fee" (as defined below) for proxy material mailings, including the annual report, and 10 cents for interim report mailings, with respect to each account where the member has eliminated the need to send materials in paper format through the mails (such as by including multiple proxy ballots or forms in one envelope with one set of material mailed to the same household, by distributing multiple proxy ballots or forms electronically thereby reducing the sets of material mailed, or by distributing some or all material electronically) shall be: (i) 25 cents with respect to issuers whose shares are held in at least 200,000 nominee accounts; and (ii) 50 cents with respect to issuers whose shares are held in fewer than 200,000 nominee accounts.

[(b)] Members may charge for envelopes, provided that they are not furnished by the issuer, the trustee, or a person soliciting proxies.]

[(c)] (b) Members are reminded that rule 2430 requires that any such charges must be reasonable. *Members may request reimbursement of expenses at less than the approved rates; however, no member may seek reimbursement at rates higher than the approved rates or for items or services not specifically listed above without the prior*

notification to and consent of the person soliciting proxies or the company.

[Accordingly, this is a guide and a member may request reimbursement of expenses at other rates after taking into consideration all relevant factors.]

(c) *Rule 2260 requires members to forward promptly issuer-supplied annual reports, interim reports, proxy statements and other material to beneficial owners. Members are not required to transmit more than one annual report, interim report, proxy statement or other material to beneficial owners with more than one account (including trust accounts). In addition, member organizations may eliminate multiple transmissions of reports, statements or other materials to beneficial owners having the same address, provided they comply with applicable SEC rules with respect thereto (see SEC rule 14b-1 under the Act).*

* * * * *

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 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

NASD proposes to amend IM-2260 to adopt the same fee structure recently adopted by the New York Stock Exchange, Inc. ("NYSE") and the American Stock Exchange LLC ("Amex") governing the reimbursement of members for costs incurred in forwarding proxy material, annual reports, information statements and other materials. The proposed amendments to IM-2260 would also advise members that they may request reimbursement of expenses at less than the approved rates, but that no member may seek reimbursement at rates higher than the approved rates or for items or services not specifically listed without the prior notification to and consent of the person soliciting proxies or the company.

The SEC's proxy rules, rules 14a-13, 14b-1, and 14b-2 under the Act, do not specify the fees that nominees can charge issuers for distributing proxy materials; rather, they state that issuers must reimburse nominees for "reasonable expenses" incurred. The Commission approved the NYSE's current fee structure on March 25, 2002,⁴ following numerous meetings of the Proxy Voting Review Committee (the "Committee"), a private initiative that was established to review the NYSE's pilot fee program and the proxy process in general.⁵ The Commission found that "the Committee's recommended fee reductions [for 'large issuers'] were reasonable and should help to alleviate the burden and cost that large issuers currently bear in the proxy distribution process and more fairly allocate the cost among large issuers and small issuers."⁶ The Commission concluded that the NYSE's proposed fee changes were reasonable and fairly allocated, did not discriminate among issuers, and did not impose any unnecessary burdens on competition. On June 3, 2002, the Amex amended its proxy reimbursement fees to conform to those of the NYSE.⁷

The proposed amendments to IM-2260 will provide members with the

⁴ Securities Exchange Act Release No. 45644 (March 25, 2002), 67 FR 15440 (April 1, 2002) ("NYSE Proposal"). The Commission emphasized that permanent approval of the NYSE's pilot program did not end the discussion of proxy fee reform. The Commission urged the NYSE and the Committee to continue discussing proxy fee reform with the eventual goal that the marketplace, rather than self-regulatory organizations, will establish reasonable and competitive proxy reimbursement fees. The Commission also stated that it expected the NYSE to continue to monitor its fees "to ensure they are related to 'reasonable expenses' of the NYSE's member brokers in accordance with the Act, and propose changes where appropriate."

⁵ The Committee concluded that the NYSE's Proxy Reimbursement Guidelines, which had been established in a pilot program and approved by the Commission on March 14, 1997, had been instrumental in setting the costs that issuers incurred in having broker-dealers and intermediaries transmit proxy and other materials to security holders at fair and reasonable levels. On that basis, the Committee voted, with NASD abstaining, to seek permanent approval of the pilot program guidelines, with some modifications to reflect the economies of scale of large issuers, defined by the Committee as companies that have in excess of 200,000 street name shareholders (approximately 200 companies). The Committee voted to reduce the basic mailing fee from 50 cents to 40 cents; increase the suggested per-nominee fee for intermediaries that coordinate the proxy and mailing activities of multiple nominees to \$20.10 per set of material required for "small issuers" and \$20.05 per set of material required for "large issuers"; and reduce from 50 cents to 25 cents the incentive fee for initial mailings of the materials of large issuers.

⁶ *Id.*

⁷ Securities Exchange Act Release No. 46146 (June 28, 2002), 67 FR 44902 (July 5, 2002) ("Amex Proposal").

same schedule of fees that have been adopted by the NYSE and Amex. The proposed amendments to IM-2260 will also permit members to request reimbursement of expenses at less than the rates set forth in IM-2260, but it will require members to notify and obtain consent from the person soliciting proxies or the company for reimbursement at rates higher than the approved rates or for items or services not specifically referenced in IM-2260. The proposed rule change also advises members that they are not required to transmit more than one annual report, interim report, proxy statement or other material to beneficial owners with more than one account (including trust accounts), and that they may eliminate multiple transmissions of reports, statements or other materials to beneficial owners having the same address, provided they comply with applicable SEC rules. The proposed rule change will continue to provide that a member providing materials under NASD rule 2260 may not charge for envelopes that are furnished by the issuer, the trustee, or a person soliciting proxies. By conforming its proxy reimbursement guidelines to those adopted by the NYSE and Amex, NASD proposes to adopt reimbursement rates that it believes the Commission has already determined are reasonable and fairly allocated, do not discriminate among issuers, and do not impose any unnecessary burdens on competition.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A of the Act,⁸ in general and with section 15A(b)(6) of the Act,⁹ in particular, in that it is 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 rule change to IM-2260 is designed to accomplish these ends by providing NASD members with rates of reimbursement for expenses incurred in forwarding proxy and other materials that are fair and reasonable and consistent with fees charged by the NYSE and Amex.

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 and 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 with respect to the proposed rule change.

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

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)¹⁰ of the Act and rule 19b-4(f)(6)¹¹ thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.¹²

A proposed rule change filed under rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, pursuant to rule 19b-4(f)(6)(iii),¹³ the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. NASD has requested that the Commission waive the 30-day pre-operative waiting period because it believes that doing so will be consistent with the protection of investors and public interest.

The Commission, consistent with the protection of investors and the public interest, has waived the 30-day operative date requirement for this proposed rule change, and has determined to designate the proposed rule change as operative as of the date of filing to allow NASD to implement its revised proxy fee schedule immediately.¹⁴ The Commission notes that it has already considered and addressed issues that may be raised by this proposal when it approved a similar proposal by the NYSE, and designated a similar proposal by the Amex as

immediately effective upon filing.¹⁵ The Commission further notes that this proposal will allow for consistency in proxy fees between NASD, the NYSE, and, Amex. At any time within 60 days of the filing of the 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, as amended, 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 Amex. All submissions should refer to File No. SR-NASD-2003-19 and should be submitted by March 21, 2003.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-4696 Filed 2-27-03; 8:45 am]

BILLING CODE 8010-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3479]

Commonwealth of the Northern Mariana Islands (Amendment #2)

In accordance with information received from the Federal Emergency Management Agency effective February

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² As required under rule 19b-4(f)(6)(iii), NASD provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f)

¹⁵ See NYSE Proposal, *supra* note 4 and Amex Proposal, *supra* note 7. The Commission notes that the NYSE Proposal was published for the full comment period and that the comments received were considered by the Commission and the NYSE.

¹⁶ 17 CFR 200.30-3(a)(12).

⁸ 15 U.S.C. 78o-3.

⁹ 15 U.S.C. 78o-3(b)(6).