

(requiring one hour each), and 7.4 responses³ per fund for fund personnel to assist the independent public accountants when they perform unscheduled verifications (requiring 10 burden hours each). Thus, the total hour burden per fund is estimated to 163.2 hours⁴ Commission staff estimates that each fund therefore spends approximately .2 burden hours of professional time at \$60 per hour annually in drafting resolutions by directors (.2 × \$60 = \$12), 89 hours⁵ of professional time at \$60 per hour annually in preparing transaction notations (89 × \$60 = \$5,340), and 74 hours⁶ of clerical time at \$16 per hour annually in assisting independent public accountants perform unscheduled verifications of assets (74 × \$16 = \$1,184).⁷ The total annual burden of rule 17f-2's paperwork requirements thus is estimated to be approximately 22,032 hours⁸ at an annual cost of \$882,360.⁹

Form N-17f-2 is entitled "Certificate of Accounting of Securities and Similar Investments in the Custody of Management Investment Companies." Form N-17f-2 is the cover sheet for the accountant examination certificates filed under rule 17f-2 of the Investment Company Act of 1940 by registered management investment companies ("funds") maintaining custody of securities or other investments. Form N-17f-2 facilitates the filing of the accountant's examination certificates. The use of the form allows the certificates to be filed electronically, and increases the accessibility of the examination certificates to both the Commission's examination staff and

³ This number results from 2 unscheduled verifications per portfolio multiplied by 3.7 portfolios in the average fund (2 × 3.7 = 7.4 responses per fund).

⁴ (1 response × .2 burden hours) + (89 responses × 1 burden hour) + (7.4 responses × 10 burden hours) = 163.2 burden hours.

⁵ 89 transaction notations per fund × 1 hour = 89 hours.

⁶ 7.4 verifications per fund × 10 hours = 74 hours.

⁷ Each of these hour burden estimates is based upon conversations with attorneys and accountants familiar with the information collection requirements of the rule. Commission staff relied upon the Securities Industry Association, Report on Management and Professional Earnings in the Securities Industry (2002) to determine the hourly wage rates used in the calculation of this estimate. Professional time is based on the estimated average wage for associate and general counsel in the securities industry.

⁸ 163.2 hours per fund × 135 funds = 22,032 total annual burden.

⁹ (\$12 (for drafting resolutions) + \$5,340 (for transaction notations) + \$1,184 (for unscheduled verifications)) × 135 funds = \$882,360. The annual burden for rule 17f-2 does not include time spent preparing Form N-17f-2. The burden for Form N-17f-2 is included in a separate collection of information.

interested investors by ensuring that the certificates are filed under the proper SEC file number and the correct name of a fund.

Under rule 17f-2, each fund is required to file Form N-17f-2 at least three times a year with the Commission. Commission staff estimates that it takes approximately 1 hour per response to prepare and file a Form N-17f-2 with the Commission. Thus, the total annual burden of Form N-17f-2's paperwork requirement is estimated to be approximately 405 burden hours.¹⁰ The entire hour burden will be borne by clerical staff at \$16 per hour, for a total cost of approximately \$6,480 (405 burden hours × \$16 = \$6,480). The increase in burden hours from 92 to 405 is attributable to updated estimates of the burden hours that reflect additional time spent by professionals and clerical staff in their compliance efforts.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. Complying with the collection of information requirements of the rule is mandatory for those funds that maintain custody of their own assets. The information provided to the Commission by the fund's independent public accountants about each verification of the fund's assets will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct written comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

¹⁰ The Commission staff estimates that there are 135 funds that file Form N-17f-2 each year. Each fund is required to make three responses per year, and each response requires 1 hour to prepare. The hour burden is calculated as follows: 135 (respondents) × 3 (responses per fund per year) × 1 (hours per response) = 405 hours.

Dated: May 30, 2003.

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 03-14294 Filed 6-5-03; 8:45 am]
BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 68 FR 32781, June 2, 2003.

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, June 3, 2003 at 2 p.m.

CHANGE IN THE MEETING: Time change.

The closed meeting scheduled for Tuesday, June 3, 2003 at 2 p.m. has been changed to Tuesday, June 3, 2003 at 1 p.m.

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: June 3, 2003.

Jonathan G. Katz,
Secretary.
[FR Doc. 03-14366 Filed 6-3-03; 4:50 pm]
BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47954; File No. SR-NASD-2003-87]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding the Issuance of Market Participant Identifiers

May 30, 2003.

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 May 22, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 would enable members that are registered as market makers or electronic communications networks ("ECNs") to request and receive a second market participant identifier ("MMID") with which to enter a second Attributable Quote/Order in the Nasdaq Quotation Montage or to enter non-attributable orders into SIZE in SuperMontage. The rule change would be established as a two-month pilot program currently scheduled to begin on July 1, 2003. Nasdaq will issue a Head Trader Alert publicly announcing the precise start and end dates of the pilot. The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

4613.Character of Quotations

(a) [Two-Sided] Quotation[s] Requirements and Obligations

(1) *Two-Sided Quote Obligation.* For each security in which a member is registered as a market maker, the member shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain a two-sided quotation ("Principal Quote"), which is attributed to the market maker by a special maker participant identifier ("MMID") and is displayed in the Nasdaq Quotation Montage at all times, subject to the procedures for excused withdrawal set forth in Rule 4619.

(A) No Change.

(B) No Change.

(2) *For a two-month pilot period, market makers and ECNs may request the use of a second MMID. A market maker may request the use of a second MMID for displaying Attributable Quotes/Orders in the Nasdaq Quotation Montage for any security in which it is registered and meets the obligations set forth in subparagraph (1) of this rule. An ECN may request the use of a second MMID for displaying Attributable Quotes/Orders in the Nasdaq Quotation Montage for any security in which it meets the obligations set forth in Rule 4623. A market maker or ECN that ceases to meet the obligations appurtenant to its first MMID in any security shall not be permitted to use the second MMID for any purpose in that security.*

(3) *Members that are permitted the use of second MMIDs for displaying Attributable Quotes/Orders pursuant to subparagraph (2) of this rule are subject to the same rules applicable to the members' first quotation, with two exceptions: (a) The continuous two-sided quote requirement and excused withdrawal procedures described in subparagraph (1) above, as well as the procedures described in Rule 4710(b)(2)(B) and (b)(5), do not apply to market makers' second MMIDs; and (b) the second MMID may not be used by market makers to engage in passive market making or to enter stabilizing bids pursuant to NASD Rules 4614 and 4619.*

(b)-(e) No Change.

* * * * *

IM-4613-1—Procedures For Allocation of Second Displayable MMIDs

Nasdaq has a technological limitation on the number of displayed, attributable quotations in an individual security, although it has not reached that maximum to date in any security. Therefore, Nasdaq must consider the issuance and display of a second MMID to be a privilege and not a right. Nasdaq has developed the following method for allocating the privilege of receiving and displaying a second MMID in an orderly, predictable, and fair manner on a stock-by-stock basis.

Nasdaq will automatically designate a market maker's first MMID as a "Primary MMID" and its second MMID as a "Secondary MMID." Market makers are required to use their Primary MMID in accordance with the requirements of NASD Rule 4613(a)(1) above, as well as all existing requirements for the use of MMIDs in Nasdaq systems. Market makers' use of Secondary MMIDs are subject to the requirements set forth in NASD Rule 4613(a)(2) and (a)(3) above, including the prohibition on passive market making. However, the two-sided quote requirement, and the excused withdrawal procedures under NASD Rule 4619, and 4710(b)(2)(B) and (b)(5) will not apply to the secondary MMID. Nasdaq will automatically designate each ECN's MMIDs as Primary and Secondary. Each ECN MMID will be subject to the requirements of NASD Rule 4623 and the existing ECN requirements of the NASD Rule 4700 Series. Members may also use a Secondary MMID to enter non-attributable orders into SIZE.

Nasdaq, in conjunction with the NASD, has developed procedures to maintain a high level of surveillance and member compliance with its rules with respect to members' use of both Primary and Secondary MMIDs to

display quotations in Nasdaq systems. If it is determined that a Secondary MMID is being used improperly, Nasdaq will withdraw its grant of the Secondary MMID for all purposes for all securities. In addition, if a market maker or ECN no longer fulfills the conditions appurtenant to its Primary MMID (e.g., by being placed into an unexcused withdrawal), it may not use the Secondary MMID for any purpose in that security.

The first priority of Nasdaq's method for allocating the privilege of displaying a second MMID is that each market maker or ECN should be permitted to register to display a single quotation in a security under its Primary MMID before any is permitted to register to display a second quotation under a Secondary MMID. Each market maker or ECN may register its Primary MMID to display a quotation in a security, on a first-come-first-served basis. After each market maker or ECN has been permitted to register its Primary MMID to display quotations in a stock, Nasdaq will then register Secondary MMIDs to display Attributed Quotes/Orders in that security on a first-come-first-served basis, consistent with the procedures listed below. If Nasdaq comes within five MMIDs of its maximum in a particular security, Nasdaq will temporarily cease registering additional Secondary MMIDs in that security and reserve those five remaining MMIDs for members that may register their Primary MMID in that stock in the future. If Nasdaq allocates those reserved MMIDs to members requesting Primary MMIDs and then receives additional requests for Primary MMIDs, it will use the procedure described below to reallocate Secondary MMIDs to members requesting Primary MMIDs.

For any stock in which Nasdaq has reached the maximum number of members registered to display quotations, once each month, Nasdaq will rank each of the market participants that has two MMIDs in the stock according to their monthly volume of trading, based on the lower volume of that participant's two MMIDs. Nasdaq will withdraw the second MMID display privilege of the lowest volume participant in that ranking and assign that privilege to the first member that requested the ability to display a second quotation. Nasdaq will repeat this process as many times as needed to accommodate all pending requests for Primary and Secondary MMIDs. The low-ranking member(s) will lose the ability to display a second quotation in that security for that month, but will still be permitted to use the second MMID to enter non-attributable orders into SIZE

for that security or any other, and to display a second quote in any stocks in which it is properly registered to do so, subject to the conditions described in the rule and this interpretive material.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

An NASD member that registers as a market maker or ECN is permitted to enter one two-sided quotation per security in the Nasdaq Quotation Montage, and is assigned a unique market participant identifier ("MMID") with which to enter such quotations. The NASD 4600 Rule Series governs the character of such quotations and the rights and obligations of members that display quotations in the Nasdaq Quotation Montage via their MMIDs. The NASD Rule 4700 Series sets forth the rights and obligations of members that participate in the Nasdaq National Market Execution System ("SuperMontage"), including the entry of quotes and orders and the display of quotations. Numerous other NASD and Commission rules govern the conduct of members in their use of MMIDs to enter and execute orders and display quotes, including, for example, NASD IM-2110-2 (the "Manning Interpretation"), NASD Rule 6950 (the "Order Audit Trail System"), and NASD Rule 2320 (the "Best Execution" rule).

Nasdaq proposes to amend NASD Rule 4613(a) to permit market makers and ECNs to request the use of a second MMID for displaying Attributable Quotes/Orders in the Nasdaq Quotation Montage. A market maker would be entitled to request the use of a second MMID for displaying Attributable Quotes/Orders in any security in which it is registered and meets the obligations set forth in NASD Rule 4613(a)(1), including the maintenance of a continuous two-sided quotation. An

ECN would be entitled to request the use of a second MMID for displaying Attributable Quotes/Orders in the Nasdaq Quotation Montage for any security in which it meets the obligations set forth in Rule 4623.

Members that are permitted the use of second MMIDs for displaying Attributable Quotes/Orders would be subject to the same rules applicable to the members' first quotation. In other words, market makers that display a second Attributable Quote/Order would be required to comply with all rules applicable to market makers that display a single Attributable Quote/Order, and ECNs would be required to comply with all rules applicable to ECNs in their display of Attributable Quotes/Orders. There would be only two exceptions to that general principle. First, the continuous two-sided quote requirement and excused withdrawal procedures, as well as the procedures described in NASD Rule 4710(b)(2)(B) and (b)(5) would not apply to market makers' use of second MMIDs. Second, a market maker would be permitted to use only one MMID, its Primary MMID, to engage in passive market making or to enter stabilizing bids pursuant to NASD Rules 4614 and 4619. In all other respects, members would have the same rights and obligations in using a second MMID to enter quotes and orders and to display quotations as they do today.

Nasdaq believes that the ability to enter quotes and orders and to display quotations under a second MMID would benefit the Nasdaq market by enabling members to contribute more liquidity to the market, add to the transparency of trading interest, and better serve the needs of investors.³ Members would use the second MMID to route orders and quotes to SuperMontage from different units within their firms, including market making, arbitrage, retail, and institutional trading desks, among others. Within the same firm, these desks serve a variety of functions and investors, often with different needs and goals that are accomplished by differing trading strategies or practices. Members that, in the past, have specialized in a particular investor type or trading practice have expanded and integrated their operations. Nasdaq believes that these members require the ability to participate in Nasdaq trading in new ways.

At the same time, Nasdaq believes that it is essential for it to maintain its regulation of trading on Nasdaq and the

same high level of compliance with NASD and Commission rules that it believes it has achieved to date. Except as noted in the proposed rule, members that use a second MMID would be required to comply with all NASD and Commission rules applicable to their current use of a single MMID. Members would be prohibited from using a second MMID to accomplish indirectly what they are prohibited from doing directly through a single MMID. For example, members would not be permitted to use a second MMID to avoid their Manning obligations under IM-2110-2, best execution obligations under NASD Rule 2320, or their obligations under the Commission Order Handling Rules. Members would be required to continue to comply with the firm quote rule, the OATS rules, and the Commission order routing and execution quality disclosure rules. In addition, Rule 4613(a) specifically prohibits firms from displaying a second Attributable Quote/Order to engage in passive market making or to enter stabilizing bids because this could violate NASD Rules 4614 and 4619 and Commission Regulation M. To the extent that the allocation of second MMIDs were to create regulatory confusion or ambiguity, every inference would be drawn against the use of a second MMID in a manner that would diminish the quality or rigor of the regulation of the Nasdaq market.

Nasdaq represents that it has a technological limitation on the number of displayed, attributable quotations in an individual security, although it has not reached that maximum to date in any security. Therefore, Nasdaq must consider the issuance and display of a second MMID to be a privilege and not a right. Nasdaq has developed the following method for allocating the privilege of receiving and displaying a second MMID in an orderly, predictable, and fair manner on a stock-by-stock basis.

Nasdaq would automatically designate a market maker's first MMID as a Primary MMID and its second MMID as a Secondary MMID. Market makers would be required to use their Primary MMID in accordance with the requirements of NASD Rule 4613(a)(1), as well as all existing requirements for the use of MMIDs in Nasdaq systems. Market makers' use of Secondary MMID's would be subject to the requirements set forth in NASD Rule 4613(a)(2) and (a)(3), including the prohibition on passive market making. However, the two-sided quote requirement, and the excused withdrawal procedures under NASD Rule 4619, and 4710(b)(2)(B) and (b)(5)

³ Nasdaq will assess no fees for the issuance or use of a second MMID, other than the SEC-approved transaction fees set forth in NASD Rule 7010.

would not apply to the Secondary MMID. Nasdaq would automatically designate each ECN's MMIDs as Primary and Secondary. Each ECN MMID would be subject to the requirements of NASD Rule 4623 and the existing ECN requirements of the NASD Rule 4700 Series. Members would also be permitted to use a Secondary MMID to enter non-attributable orders into SIZE.

Nasdaq represents that it, in conjunction with the NASD, has developed procedures to maintain a high level of surveillance and member compliance with its rules with respect to members' use of both Primary and Secondary MMIDs to display quotations in Nasdaq systems. If it were to be determined that a Secondary MMID was being used improperly, Nasdaq would withdraw its grant of the Secondary MMID for all purposes for all securities. In addition, if a market maker or ECN were no longer to fulfill the conditions appurtenant to its Primary MMID (*e.g.*, by being placed into an unexcused withdrawal), it would not be permitted to use the Secondary MMID for any purpose in that security.

The first priority of Nasdaq's method for allocating the privilege of displaying a second MMID is that each market maker or ECN should be permitted to register to display a single quotation in a security under its Primary MMID before any is permitted to register to display a second quotation under a Secondary MMID. Each market maker or ECN would register its Primary MMID to display a quotation in a security on a first-come-first-served basis. After each market maker or ECN has been permitted to register its Primary MMID to display quotations in a stock, Nasdaq would then register Secondary MMIDs to display Attributed Quotes/Orders in that security on a first-come-first-served basis, consistent with the procedures listed below. If Nasdaq were to come within five MMIDs of its maximum in a particular security, Nasdaq would temporarily cease registering additional Secondary MMIDs in that security and reserve those five remaining MMIDs for members that may register their Primary MMID in that stock in the future. If Nasdaq were to allocate those reserved MMIDs to members requesting Primary MMIDs and were then to receive additional requests for Primary MMIDs, it would use the procedure described below to reallocate Secondary MMIDs to members requesting Primary MMIDs.

For any stock in which Nasdaq has reached the maximum number of members registered to display quotations, once each month, Nasdaq would rank each of the market participants that has two MMIDs in the

stock according to their monthly volume of trading, based on the lower volume of that participant's two MMIDs. Nasdaq would withdraw the second MMID display privilege of the lowest volume participant in that ranking and assign that privilege to the first member that requested the ability to display a second quotation. Nasdaq would repeat this process as many times as needed to accommodate all pending requests for Primary and Secondary MMIDs. The low-ranking member(s) would lose the ability to display a second quotation in that security for that month, but would still be permitted to use the second MMID to enter non-attributable orders into SIZE for that security or any other, and to display a second quote in any stocks in which it is properly registered to do so, subject to the conditions described in the rule and this interpretive material.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁴ which requires, among other things, that a registered national securities association's rules must be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest. Nasdaq believes that the proposed rule change is consistent with these requirements because it will facilitate transactions in securities, remove impediments to a free and open market, and protect investors by improving the transparency and efficiency of transactions.

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

Nasdaq 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.

⁴ 15 U.S.C. 78o-3(b)(6).

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

The foregoing rule change has been filed by Nasdaq as a "non-controversial" rule change pursuant to section 19(b)(3)(A)(i) of the Act⁵ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁶ Consequently, because the foregoing proposed rule change: (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 on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest,⁷ and Nasdaq provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4 thereunder.

At any time within 60 days of the filing of such proposed rule change, 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, 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

⁵ 15 U.S.C. 78s(b)(3)(A)(i).

⁶ 17 CFR 240.19b-4(f)(6).

⁷ Nasdaq withdrew its request that the Commission waive the 30-day operative delay in view of the fact that the 30-day operative delay will have expired prior to the scheduled start date of the pilot program, July 1, 2003. Telephone conversation between Jeffrey S. Davis, Associate General Counsel Nasdaq, and Ann E. Leddy, Attorney, Division of Market Regulation, Commission (May 30, 2003).

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 number SR-NASD-2003-87 and should be submitted by June 27, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-14257 Filed 6-5-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47946; File No. SR-NASD-2002-148]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1 and 2, and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3 and 4 to the Proposed Rule Change by the National Association of Securities Dealers, Inc., to Eliminate the Regulatory Fee and Institute a Transaction-Based Trading Activity Fee

May 30, 2003.

I. Introduction

On October 18, 2002, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to eliminate the NASD's Regulatory Fee and institute a new, transaction-based Trading Activity Fee ("TAF"). The NASD amended the proposed rule change on November 5, 2002,³ and November 8, 2002.⁴ The proposed rule change, as modified by Amendment Nos. 1 and 2, was published for notice

and comment in the **Federal Register** on November 19, 2002.⁵ The Commission received 23 comments⁶ on the proposal.⁷ On March 18, 2003, the

⁵ See Securities Exchange Act Release No. 46817 (November 12, 2002), 67 FR 69784.

⁶ There are 15 comment letters submitted for the instant proposed rule change. However, the Commission also is considering comment letters submitted for SR-NASD-2002-98, SR-NASD-2002-147, SR-NASD-2003-26 and SR-NASD-2003-73. See footnotes 7 and 9, *infra*.

⁷ The NASD eliminated the Regulatory Fee and instituted the TAF when it filed SR-NASD-2002-98. See Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002). The proposal was effective upon filing with the Commission, pursuant to section 19(b)(3)(A)(ii) of the Act, and Rule 19b-4(f)(2) thereunder. 15 U.S.C. 78s(b)(3)(A)(ii), 17 CFR 240.19b-4(f)(2). The Commission received 10 comments on SR-NASD-2002-98. See September 17, 2002 letter from Lanny A. Schwartz, Philadelphia Stock Exchange, Inc. ("Phlx"), to Jonathan G. Katz, Secretary, SEC ("Phlx Letter"); September 18, 2002 letter from Edward J. Joyce, President and Chief Operating Officer, The Chicago Board Options Exchange, Inc. ("CBOE"), to Jonathan G. Katz, Secretary, SEC ("CBOE Letter #1"); September 20, 2002 letter submitted jointly by The American Stock Exchange LLC ("Amex"), CBOE, the International Securities Exchange, Inc. ("ISE"), The Options Clearing Corporation ("OCC"), The Pacific Exchange, Inc. ("PCX"), and the Phlx, to Jonathan G. Katz, Secretary, SEC ("OCC Joint Letter #1") (OCC Joint Letter #1 was later withdrawn.); September 23, 2002 letter from Susan Milligan, First Vice President and Special Counsel, OCC, to Jonathan G. Katz, Secretary, SEC ("OCC Joint Letter #2") (withdraws OCC Joint Letter #1 and substitutes a new letter that is identical to OCC Joint Letter #1 except for the removal of the Amex as a signatory to the letter); September 27, 2002 letter from Jeffrey T. Brown, Senior Vice President ("SVP"), Secretary and General Counsel ("GC"), The Cincinnati Stock Exchange, Inc. ("CSE"), to Jonathan G. Katz, Secretary, SEC ("CSE Letter #1"); September 26, 2002 letter from Stuart J. Kaswell, Senior Vice President ("SVP") and GC, The Securities Industry Association ("SIA"), to Jonathan G. Katz, Secretary, SEC ("SIA Letter #1"); October 21, 2002 letter from Margaret Wiermanski, Chief Compliance Officer, TD Securities, to Jonathan G. Katz, Secretary, SEC ("TD Securities Letter"); March 13, 2003 letter from John Boese, VP, Legal and compliance, The Boston Stock Exchange ("BSE"), to Jonathan G. Katz, Secretary, SEC ("BSE Letter"); March 27, 2003 letter from Edward J. Joyce, President and Chief Operating Officer, CBOE, to Jonathan G. Katz, Secretary, SEC ("CBOE Letter #3"); May 15, 2003 letter from Margaret Wiermanski, VP-Compliance, TD Options, LLC, to Jonathan G. Katz, Secretary, SEC ("TD Options Letter").

The NASD also filed SR-NASD-2002-147, which transformed the TAF into a pilot program, scheduled to terminate on December 31, 2002. See Securities Exchange Act Release No. 46818 (November 12, 2002), 67 FR 69782 (November 19, 2002). The Commission received eight comments on SR-NASD-2002-147, which were submitted as joint letters for SR-NASD-2002-147 and SR-NASD-2002-148. Letters for SR-NASD-2002-147 are not listed separately in this order, because they are fully documented in the list of comment letters for SR-NASD-2002-148.

Subsequently, the NASD filed the instant proposed rule change (SR-NASD-2002-148), which contained substantially the same proposed rule language as was contained in SR-NASD-2002-98, but was submitted pursuant to Section 19(b)(2) of the Act to allow for an additional notice and comment period per the commenters' requests. See Securities Exchange Act Release No. 46817 (November 12, 2002), 67 FR 69785 (November 19,

NASD responded to the comments, and amended the proposed rule change again.⁸ On April 14, 2003, the NASD extended the pilot program through June 1, 2003.⁹ On May 19, 2003, the NASD amended the proposed rule change a fourth time.¹⁰ This order

2002). The Commission received 15 comments on SR-NASD-2002-148. See December 6, 2002 letter from Edward J. Joyce, President and Chief Operating Officer, CBOE, to Jonathan G. Katz, Secretary, SEC ("CBOE Letter #2"); December 6, 2002 letter from William C. McGowan, Managing Director, TD Professional Execution, Inc., to Jonathan G. Katz, Secretary, SEC ("TD ProEx Letter"); December 10, 2002 letter from Eric Noll, Susquehanna International Group, LLP, to Jonathan G. Katz, Secretary, SEC ("Susquehanna Letter"); December 10, 2002 letter from Jeffrey T. Brown, SVP, Secretary and GC, CSE, to Jonathan G. Katz, Secretary, SEC ("CSE Letter #2"); December 9, 2002 letter from Barry S. Augenbraun, SVP and Corporate Secretary, Raymond James Financial, Inc., to Jonathan G. Katz, Secretary, SEC ("Raymond James Letter"); December 9, 2002 letter from Stuart J. Kaswell, SVP and GC, SIA, to Jonathan G. Katz, Secretary, SEC ("SIA Letter #2"); January 23, 2003 letter from Mary McDermott-Holland, Vice Chairman, Chair, Trading Issues Committee, to Jonathan G. Katz, Secretary, SEC ("STA Letter"); December 11, 2002 letter from Darla C. Stuckey, Corporate Secretary, The New York Stock Exchange, Inc. ("NYSE"), to Jonathan G. Katz, Secretary, SEC ("NYSE Letter #1"); December 5, 2002 letter, submitted jointly by CBOE, OCC, ISE, PCX, and Phlx, to Jonathan G. Katz, Secretary, SEC ("OCC Joint Letter #3"); BSE Letter; CBOE Letter #3; March 24, 2003 letter submitted jointly by CBOE, OCC, ISE, PCX, and Phlx, to Jonathan G. Katz, Secretary, SEC ("OCC Joint Letter #4"); TD Options Letter; April 10, 2003 letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC ("NYSE Letter #2"); May 27, 2003 letter from Gabriel A. Duran, Chief Compliance Officer, GVR Company, LLC, to Jonathan G. Katz, Secretary, SEC ("GVR Letter").

The NASD extended the pilot in SR-NASD-2002-182, through March 1, 2003. The Commission received no comments on SR-NASD-2002-182. The NASD extended the pilot through April 1, 2003 in SR-NASD-2003-26. See Securities Exchange Act Release No. 47436 (March 4, 2003), 68 FR 11422 (March 10, 2003). The Commission received two comments on SR-NASD-2003-26. NYSE Letter #2; GVR Letter.

⁸ See March 18, 2003 letter from Barbara Z. Sweeney, SVP and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division, SEC, ("NASD Response Letter" or "Amendment No. 3"). In Amendment No. 3, the NASD (1) responded to the comments; (2) incorporated the interpretations contained in *Notices to Members 02-36* and *02-75* in the proposed rule language. See also, March 28, 2003 letter from Kathleen A. O'Mara, Associate General Counsel, Regulatory Policy and Oversight, NASD, to Katherine A. England, Assistant Director, and Joseph Morra, Special Counsel, Division of Market Regulation, SEC (via email) ("NASD Response Letter #2").

⁹ See Securities Exchange Act Release No. 47685 (April 16, 2003), 68 FR 20198 (April 24, 2003) (SR-NASD-2003-73). The Commission received two comments on the proposed rule change. See May 13, 2003 letter from Robert Bellick, Christopher Gust, Wolverine Trading, LLC, to Jonathan G. Katz, Secretary, SEC ("Wolverine Letter"); GVR Letter.

¹⁰ See May 19, 2003 letter from Barbara Z. Sweeney, SVP and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division, SEC ("Amendment No. 4"). In Amendment No. 4, the NASD proposes to exempt from the TAF listed

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