

Correct Fee and the "As of" Late Fee charge assessed to each member for the month of October 2002 from \$3.00 per trade to \$1.50 per trade (a 50% discount), and to reduce the Cancel or Correct Fee and the "As of" Late Fee for the month of November 2002 from \$3.00 per trade to \$2.25 per trade (a 25% discount).

The proposed rule change is based on an analysis by NASD of the economic impact of the current fees versus the proposed amended fees on TRACE participants. NASD had initially anticipated that the number of corrective transactions entered into the TRACE system over time would decline as participants grew more familiar with the new system and improved their reporting accuracy. However, a review by NASD of the unbilled July, August and September 2002 activity in these corrective transactions does not evidence the anticipated decline in these transactions. Moreover, certain firms have experienced a disproportionately high volume of corrective transactions largely because of reporting and system coding errors by participants. As a result, NASD believes that phasing-in the full fee structure for corrective transactions will allow firms greater time to learn to effectively use the new TRACE system and focus on methods to reduce corrective transactions, while still establishing an incentive for firms to report TRACE transactions correctly and on time.

NASD will continue to review and reassess the impact of the overall TRACE fee structure over time to ensure that the fees are reasonable and equitable for participants in the TRACE system.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,⁹ which requires, among other things, that NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which NASD operates or controls. NASD proposes to reduce the Web Browser Access Fee, the Cancel or Correct Fee, and the "As of" Trade Late Fee during the periods described for the TRACE system to allow member firms more time to adjust to the new reporting system and focus on methods to decrease the likelihood of incurring such charges over time. NASD believes that such proposed rule change will more equitably allocate fees to NASD

members during the early stages of implementing TRACE.

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 or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

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

The proposed rule change is effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁰ and Rule 19b-4(f)(2) thereunder,¹¹ because the proposal is "establishing or changing a due, fee, or other charge." The rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(2) thereunder, and is operational as of October 1, 2002.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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 proposal 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 number SR-NASD-2002-167 and should be submitted by December 24, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46901; File No. SR-NASD-2002-85]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Issuer Disclosure of Material Information

November 25, 2002.

I. Introduction

On June 26, 2002, 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"), 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 modify Nasdaq's rules pertaining to issuer disclosure of material information. The proposed rule change was published for notice and comment in the **Federal Register** on August 7, 2002.³

The Commission received one comment on the proposed rule change.⁴ On October 16, 2002, Nasdaq filed a letter in response to comments on the proposal.⁵ This order approves the proposed rule change.

II. Summary of Comments

The PR Newswire Letter

In its comment letter, PR Newswire ("Commenter") submits that the filing of a Form 8-K via EDGAR, without more, does not achieve the goal of providing

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 46288 (July 31, 2002), 67 FR 51306.

⁴ See August 26, 2002 letter from Charles H. Morin, Chief Executive Officer, PR Newswire, to Margaret H. McFarland, Deputy Secretary, Commission ("PR Newswire Letter").

⁵ See October 15, 2002 letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission ("Nasdaq Response Letter").

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

⁹ 15 U.S.C. 78o-3(b)(5).

investors with timely access to material corporate information.⁶ According to the Commenter, when an issuer files a Form 8-K with the Commission, investors will receive the information only if investors (1) know when to anticipate the disclosure; (2) know where to find the information; and (3) have access to the Commission's Web site or a site carrying EDGAR content.⁷ The Commenter believes that allowing only the filing of a Form 8-K in satisfaction of disclosure requirements would reduce the possible dissemination of information to the investing public.⁸

The Commenter suggests that requiring the filing of a Form 8-K in tandem with a news release distributed by a commercial newswire service and posted on an issuer's Web site will "fully address the desired goals."⁹ Additionally, the Commenter believes that the scope of dissemination of such a press release should "correspond to dissemination that the issuer normally effects with respect to its results of operations."¹⁰ The Commenter suggests that disclosure through a press release should require dissemination of the entire text of the press release, to avoid providing limited and selective disclosure, in contrast to the information obtained by those who obtain the complete press release.¹¹

Nasdaq's Response Letter

Nasdaq believes that the filing of a Form 8-K provides "effective, broad and non-exclusionary public disclosure," and that requiring the issuance of a press release in tandem with filing a Form 8-K would place a burden on issuers while providing "no significant benefit to investors."¹² Nasdaq states that filings made with the Commission via EDGAR are available on "most major financial news Web sites and Web portals," and lists a number of Web sites that have direct links to issuers' filings.¹³ In addition to obtaining this information via the Internet, Nasdaq notes that filing of a Form 8-K may result in media coverage, and that under Nasdaq rules, issuers must provide notification of material news announcements, including those made by filing a Form 8-K, to Nasdaq's Market Watch Department before disseminating them to the public. The Market Watch Department evaluates

such information for materiality, and implements trading halts for dissemination of news, if appropriate.¹⁴

Nasdaq maintains that the proposal is "designed to harmonize its disclosure rules with Regulation FD" to enable issuers to reap the benefits of using "current technologies as part of a comprehensive disclosure strategy," and to address concerns that self-regulatory organization rules override the flexibility provided by Regulation FD.¹⁵

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, the comment letter, and Nasdaq's response to comments, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association¹⁶ and, in particular, the requirements of section 15A(b)(6) of the Act. Section 15A(b)(6) requires rules that are designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. The Commission finds that aligning Nasdaq's disclosure rules with Regulation FD should minimize confusion among issuers, while simultaneously allowing issuers to use current technologies to disseminate material information to the public in a broad, inclusive manner. The Commission makes no finding as to whether requiring issuers to provide a news release to be distributed by a commercial newswire service and posted on the issuer's web site, in addition to filing a Form 8-K, will result in expanding the reach of disclosure to the investing public. The Commission is satisfied that the proposal conforms to the requirements for disclosure as delineated in Regulation FD, and as such, finds it is consistent with the requirements of the Act, in general, and specifically, with section 15A(b)(6).

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-NASD-2002-85) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46903; File No. SR-NSCC-2002-06]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to the Imposition of Fines

November 25, 2002.

I. Introduction

On July 26, 2002, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change File No. SR-NSCC-2002-06 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and on August 21, 2002, amended the proposed rule change. Notice of the proposal was published in the **Federal Register** on August 27, 2002.² No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

NSCC's rule change amends Addendum P of its Rules and Procedures to clarify existing fines and to impose new fines upon its members. The rule change specifically sets forth actions or inactions which will result in NSCC imposing fines.³

NSCC's Rule 48 allows NSCC to impose fines upon its members for any error, delay, or other conduct that is determined to be detrimental to the operations of NSCC. Historically, NSCC has imposed fines upon members for failures to settle in a timely manner end of day settlement balances, for late settlement acknowledgements, and for late payments of clearing fund deposits.

NSCC's Rule 15 permits NSCC to request that members furnish to NSCC such adequate assurances of their financial responsibility and operational capability as NSCC may at any time deem necessary. Pursuant to this rule

⁶ PR Newswire Letter at p.3.

⁷ *Id.*

⁸ *Id.* at p.4.

⁹ *Id.*

¹⁰ *Id.* at 5.

¹¹ *Id.*

¹² Nasdaq Response Letter at p.2.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at p.3.

¹⁶ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 46385 (August 20, 2002), 67 FR 55051.

³ Exhibit 1 to this order sets forth NSCC's revised fine schedule.