

proposes extending this discount until November 30, 2004.

- **Facilitation Fee:** The Exchange currently charges transaction fees on a sliding scale, depending on the Exchange's overall trading volume. These fees range from \$.21 a contract to \$.12 a contract.<sup>7</sup> As an alternative, the ISE also imposes a flat \$.15 a contract fee for use of the Facilitation Mechanism (when firms provide liquidity for the customers' block-sized orders). The Exchange originally established the \$.15 fee to be a discount from the standard transaction fee charge. However, as volume has increased, there are months in which the standard transaction fee is less than the Facilitation fee. Thus, the Exchange proposes to amend the fee schedule to establish the charge for Facilitation trades as the lesser of the prevailing transaction fee or \$.15.<sup>8</sup>

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general and Section 6(b)(4) of the Act,<sup>10</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the Exchange believes that the amended proposed rule change would generally extend current waivers or otherwise lower fees.

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

The Exchange does not believe that the proposed rule change will 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 with respect to the proposed rule change.

<sup>7</sup> The Commission notes that the fee is based on the Exchange's ADV, with the transaction fees decreasing as ADV increases.

<sup>8</sup> The Commission notes that the proposal also removes references in its Schedule of Fees to certain index option fee waivers that have already expired. See Exhibit A of the proposed rule change.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

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

The foregoing amended proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>11</sup> and Rule 19b-4(f)(2) thereunder,<sup>12</sup> because it changes a fee imposed by the Exchange. At any time within 60 days of the filing of the 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 amended proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2004-15 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. All submissions should refer to File Number SR-ISE-2004-15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2004-15 and should be submitted on or before July 14, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 04-14141 Filed 6-22-04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49854; File No. SR-NASD-2004-057]

### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereby to the National Association of Securities Dealers, Inc. Relating to Proposed Amendments To Reduce the Reporting Period for Transactions in TRACE-Eligible Securities

June 14, 2004.

On April 1, 2004, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Rule 6230(a) to reduce the period to report a transaction in a TRACE-eligible debt security in two stages: (i) From 45 to 30 minutes in stage one ("Stage One"), and (ii) subsequently, from 30 to 15 minutes in stage two ("Stage Two"). Rule 6230 is one of the Trade Reporting and Compliance Engine ("TRACE") rules. On April 16, 2004, NASD filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On April 22, 2004, NASD filed Amendment No. 2 to the proposed rule

<sup>13</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 letter from Sharon K. Zackula, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated April 16, 2004 ("Amendment No. 1"). Amendment No. 1 clarifies the effective dates that NASD will establish for the proposed rule change upon approval by the Commission.

change.<sup>4</sup> Notice of the proposed rule change and Amendment Nos. 1 and 2 thereto were published for comment in the **Federal Register** on April 29, 2004.<sup>5</sup>

The Commission received two comment letters regarding the proposal.<sup>6</sup> On June 2, 2004, NASD filed a response to the comment letters.<sup>7</sup> This order approves the proposed rule change.

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations promulgated thereunder applicable to a registered securities association and, in particular, with the provisions of Section 15A(b)(6) of the Act<sup>8</sup>, which requires, among other things, that 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.<sup>9</sup> The Commission believes that the proposed rule change, as amended, will provide NASD, as the self-regulatory organization for the over-the-counter markets, with appropriate capabilities to regulate and provide surveillance of the over-the-counter debt securities market to prevent fraudulent and manipulative acts and practices, and will improve transparency for the benefit of investors by reducing the period between the time of execution of a transaction and the dissemination of transaction information for securities subject to dissemination in furtherance of the public interest and for the protection of investors.

Both commenters on the proposal opposed any further reduction of the

period to report a transaction in a TRACE-eligible debt security. Mr. Seifer's Letter expressed concern that decreasing the reporting period would leave a reporting window insufficient to allow the proper reporting of TRACE-eligible securities and would create a market environment where the immediate needs of a customer would have to be put on hold to comply with the requirements of TRACE reporting. Mr. Schlesinger's Letter stated that the mechanics of the corporate bond marketplace and the equity marketplace are distinctly different, and that reducing the reporting time of trades on TRACE to what is appropriate for an equity trade on Nasdaq is mistaken.

NASD's Response Letter states that current reporting statistics support its position that member firms have taken, and continue to take, the steps necessary to meet the proposed TRACE requirement of 30-minute, and subsequently, 15-minute reporting. NASD stated that during the first four months of 2004, approximately 84 percent of all transactions in TRACE-eligible securities were reported within 30 minutes, and approximately 73 percent of all TRACE-eligible securities transactions were reported within 15 minutes, although a 45-minute reporting period was in effect. NASD further stated that both NASD and the SEC have provided notice over a period of years that 15-minute TRACE reporting was a regulatory goal, pointed out that NASD is proposing a two-stage process to allow firms to implement the measures necessary to comply with 15-minute reporting, and stated that NASD consulted extensively with member firms and industry associations in developing this two-stage process. In response to the concern that NASD is trying to reduce the TRACE reporting period to one that is feasible for equity securities, NASD noted that the current reporting requirement for equity securities is 90 seconds, a significant difference from the current proposal to reduce the reporting period to 30 minutes, and later, to 15 minutes.

Both commenters stated that reducing the TRACE reporting period would increase members' costs of trading TRACE-eligible securities. Mr. Seifer's Letter stated that TRACE has added layers of expense for both clearing and non-clearing firms by expanding the need for additional personnel and imposing fines against brokers for late TRACE reporting. Mr. Schlesinger's Letter stated that his firm would incur significant costs in technology and personnel in order to be compliant with the reduced reporting period.

NASD's Response Letter states that the two-stage process is being used to minimize the impact to firms as they make any necessary changes, including the costs of such changes. By extending the period over which the TRACE reporting period will be reduced, NASD stated that it believes that firms should be able to prepare more efficiently to make the changes needed to achieve 15-minute reporting.

NASD's Response Letter respectfully disagreed with Mr. Seifer's comment that TRACE does not provide transparency for the general public. NASD stated that public investors and other market participants have been provided increased transparency in the corporate bond markets as a direct result of TRACE. NASD stated that transaction information currently is publicly disseminated on approximately 70 percent of the total par value traded in investment-grade TRACE-eligible securities. NASD further stated that members of the public may access last sale pricing at no cost in these debt securities at NASD's Web site, <http://www.nasdbondinfo.com>, or at other Web sites, such as that of The Bond Market Association (<http://www.investinginbonds.com>). Pricing information on these Web sites is delayed at least four hours. Information on certain actively traded bonds is also published daily in *The Wall Street Journal*. Members of the public seeking more immediate access to transaction data may contract to receive disseminated transaction data from commercial vendors. NASD also stated that it expects transaction information to be more widely available in the future.

In addition, Mr. Schlesinger's Letter expressed concern that the "time of execution" for a transaction in a TRACE-eligible security within the meaning of NASD Rule 6210(a) is not clear. Mr. Schlesinger stated that "a meeting of the minds" evidencing an executed transaction does not occur "until a report is given and accepted." NASD's Response Letter states that NASD believes that this is an inaccurate description of an execution, and notes that executing a transaction precedes the steps described by Mr. Schlesinger, which are those generally taken to confirm a trade previously executed.

In addition, Mr. Seifer recommended that TRACE be funded as part of the NASD annual assessment for each member firm and Mr. Schlesinger stated that the reporting of agency transactions as if they were principal transactions can be confusing and cumbersome. This proposed rule change, as amended, does not address those issues.

<sup>4</sup> See letter from Sharon K. Zackula, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated April 22, 2004 ("Amendment No. 2"). Amendment No. 2 amends the discussion of industry and regulatory trends in the securities industry favoring more "real-time" reporting and "real-time" transmission of transaction information for clearance and settlement.

<sup>5</sup> Securities Exchange Act Release No. 49607 (April 23, 2004), 69 FR 23549.

<sup>6</sup> See e-mail letter from Richard F. Seifer, President and C.E.O., Bernard, Richards Securities Inc., to [rule-comments@sec.gov](mailto:rule-comments@sec.gov) dated May 10, 2004 ("Mr. Seifer's Letter"), and e-mail letter from Alan H. Schlesinger, Sage Securities Corp., to [rule-comments@sec.gov](mailto:rule-comments@sec.gov) dated May 20, 2004 ("Mr. Schlesinger's Letter").

<sup>7</sup> See letter from Sharon K. Zackula, Associate General Counsel, Regulatory Policy and Oversight, Office of General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated June 2, 2004 ("NASD's Response Letter").

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

<sup>9</sup> In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

After careful consideration, the Commission believes that NASD's reduction in the reporting period for transactions in TRACE-eligible securities will enable it to implement TRACE more effectively, thus enhancing investor protection by improving the immediacy of information reported to TRACE for both regulatory and transparency purposes. For the reasons discussed above, the Commission finds that the amended proposal is consistent with the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change, as amended, (SR-NASD-2004-057), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority,<sup>11</sup>

**Margaret H. McFarland**,  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49875; File No. SR-NASD-2004-001]

### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Arbitrator Training Fees

June 16, 2004.

#### I. Introduction

On January 7, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Dispute Resolution, filed with the Securities and Exchange Commission ("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 revise the fees that are charged to its panel member arbitrators. On April 2, 2004, NASD filed Amendment No. 1 to the proposed rule change.<sup>3</sup> Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on May 14, 2004.<sup>4</sup> No comments were

received on the proposed rule change. This order approves the proposed rule change.

#### II. Description of Proposed Rule Change

The proposed rule change would amend the fees that are charged to its panel member arbitrators. Specifically, the proposal would raise the fee for panel member training from \$100 to \$125 for all applicants who register for the training after the proposed rule change becomes effective.

#### III. Discussion

The Commission 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 association.<sup>5</sup> Specifically, the Commission believes that the increased fee that NASD proposes to charge for arbitrator training is consistent with Sections 15A(b)(5) and 15A(b)(6) of the Act. Section 15A(b)(5) requires that the rules of a registered national securities association 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 the association operates or controls. Section 15A(b)(6) requires, among other things, that the rules of a national securities association 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.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change (SR-NASD-2004-001) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority,<sup>7</sup>

**Margaret H. McFarland**,  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49876; File No. SR-NASD-2004-016]

### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Implementation of a Web-based Arbitration Claim Notification and Filing Procedure

June 16, 2004.

#### I. Introduction

On January 29, 2004, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("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 amending NASD Rule 10314(a) to allow parties to complete part of the arbitration claim filing process through the Internet. On February 25, 2004, NASD filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On April 16, 2004, NASD filed Amendment No. 2 to the proposed rule change.<sup>4</sup> Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on May 14, 2004.<sup>5</sup> No comments were received on the proposed rule change. This order approves the proposed rule change.

#### II. Description of Proposed Rule Change

Currently, to file an arbitration claim, NASD requests that the party voluntarily complete and remit, along with other documents, a Claim Information Sheet containing data about the claim and the parties. Upon receipt, NASD staff manually enters the claim data into its CRAFTIS computer system.<sup>6</sup>

The proposed rule change would permit, but not require, a claimant to file an arbitration claim by completing an online version of the Claim Information Form. The online version of

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

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

<sup>3</sup> See letter from Mignon McLemore, Counsel, NASD, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated February 24, 2004.

<sup>4</sup> See letter from Mignon McLemore, Counsel, NASD, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated April 16, 2004.

<sup>5</sup> See Securities Exchange Act Release No. 49673 (May 10, 2004), 69 FR 26910.

<sup>6</sup> CRAFTIS is the legacy software application that NASD Dispute Resolution uses to support its case administration function. It uses a non-Web-based technology platform.

<sup>10</sup> *Id.*

<sup>11</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 letter from Mignon McLemore, Counsel, NASD, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated April 2, 2004.

<sup>4</sup> See Securities Exchange Act Release No. 49674 (May 10, 2004), 69 FR 26909.

<sup>5</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(12).