

capable of monitoring the communications.

The Commission believes that the provision for review of incoming non-electronic correspondence also is designed to protect investors. The Commission notes that the Notice to Members mandates that Rule 3010(d) will continue to require review of all incoming non-electronic correspondence directed to registered representatives.¹⁸ The Commission believes that this requirement may provide a broker-dealer with early notice of sales practice problems and help to ensure proper handling of customer funds. Incoming non-electronic correspondence directed to associated persons other than registered representatives, and all incoming communications in electronic format, will be subject to the policies and procedures the firm establishes pursuant to NASD Rule 3010(d).

The NASD represents that it will review members' procedures and systems periodically to ensure that they are reasonable in view of the firm's structure, the nature and size of its business, and its customer base.¹⁹ The Commission expects the NASD to monitor closely the policies and procedures firms adopt pursuant to the proposal to ensure that they satisfy the requirements of NASD Rule 3010. In addition, the Commission expects the NASD to review NASD Rule 3010 as it gains experience with the rules and to consider any necessary revisions, including additional minimum requirements for broker-dealers' communication policies.

Finally, the Commission believes that it is reasonable for the NASD to amend NASD Rule 3110 to indicate that members must preserve books and records as required under SEC Rule 17a-3 and comply with the recordkeeping format, medium and retention period specified in SEC Rule 17a-4 in order to clarify the recordkeeping requirements applicable to broker-dealers.

The Commission finds good cause for approving proposed Amendment No. 1

¹⁸ See Notice to Members, *supra* note 5. The requirement to review all incoming non-electronic correspondence directed to registered representatives is not specified in the text of the rule language. This requirement parallels a NYSE provision contained in Interpretation 342.16/04 in the NYSE *Interpretation Handbook*. The NASD's requirement is set forth only in its Notice to Members which was submitted by NASDR as an amendment to the original rule filing; therefore, NASD member firms must comply with this additional requirement, as well as with the other specific requirements set forth in the Notice to Members.

¹⁹ *Id.*

prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that Amendment No. 1, which incorporates the Notice to Members into the proposal, further clarifies the Association's new rules by providing additional guidance to NASD members. As discussed more fully above, the Notice to Members provides additional requirements and guidelines for broker-dealers' supervisory policies. Accordingly, the Commission believes that it is consistent with Section 15(b)(6) of the Act²⁰ to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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, N.W., Washington, D.C. 20549. Copies of all such filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-97-24 and should be submitted by January 29, 1998.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²¹ That the proposed rule change (SR-NASD-97-24), including Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.²²

[FR Doc. 98-418 Filed 1-7-98; 8:45 am]

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²⁰ 15 U.S.C. 78o-3(b)(6).

²¹ 15 U.S.C. 78s(b)(2).

²² 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39504; File No. SR-NASD-97-96]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Incorporated Relating to the Hearing Process Fees on Members That Are Parties to Arbitration Proceedings

December 31, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 23, 1997, the National Association of Securities Dealers, Incorporated ("NASD" or "Association") 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 the self-regulatory organization. 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 Regulation is proposing to amend Rule 10333(d) of the NASD's Code of Arbitration Procedure ("Code") to adjust the Hearing Process Fee Schedule so that the amounts in dispute of the lowest brackets in the Rule 10333(d) hearing Process Fee Schedule are consistent with the dollar amount at which the Prehearing Process Fee is imposed. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in *brackets*.

10333. Member Surcharge and Process Fees

* * * * *

Hearing Process Fee Schedule (accrues and becomes due and payable when the parties are notified of the date and location of the first hearing session)

Damages requested	Hearing process fee
\$1-\$25,000[30,000]	\$0
\$25,000.01[30,000.01]-\$50,000	1,000
\$50,000.01-\$100,000	1,500
\$100,000.01-\$500,000	2,500
\$500,000.01-\$1,000,000	3,500
\$1,000,000.01-\$5,000,000	4,500
More than \$5,000,000	5,000

Damages requested	Hear- ing proc- ess fee
Unspecified	2,000

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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

On December 11, 1997, NASD Regulation filed a proposed rule change with the Commission amending Rule 10333 of the Code to add a process fee on members named as parties to arbitration proceedings. The proposed rule change, which was submitted pursuant to Section 19(b)(3)(A) of the Act, became effective upon filing. On December 15, 1997, the Commission published a Notice of Filing and Immediate Effectiveness of the proposed rule change, announcing the filing of the amendment and that NASD Regulation would implement the new fee on January 2, 1998.¹

NASD Regulation is now proposing to amend the first two Hearing Process fee brackets so that the first bracket for which a hearing process fee will be assessed will be for cases where \$25,000.01–\$50,000 is in dispute. This bracket in the fee schedule as originally filed was \$30,000.01–\$50,000. This amendment is consistent with NASD Regulation's original intent in adopting the fee. Moreover, the amendment will make the amounts in dispute of the lowest brackets in the Rule 10333(d) Hearing Process Fee Schedule consistent with the dollar amount at which the Prehearing Process fee is imposed (amounts in dispute of greater than \$25,000). NASD Regulation plans to make this proposed rule change

effective, along with the rest of the process fee, on January 2, 1998.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act² in that the proposed rule change provides for the equitable allocation of reasonable charges among members and other persons using the Association's arbitration facility and requires member firm users to absorb a reasonable share of the costs of operating the arbitration program.

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

The Association does not believe the proposed rule change will impose any burden on competition.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act³ and subparagraph (e) of Rule 19b–4 thereunder,⁴ in that the proposal constitutes an amendment to a fee which the NASD imposes on its members. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–96 and should be submitted by January 29, 1998.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 98–421 Filed 1–7–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39511; File No. SR–NYSE–96–26]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 to the Proposed Rule Change by the New York Stock Exchange, Inc., Relating to NYSE Rules 342, "Offices—Approval, Supervision and Control," 440, "Books and Records," and 472, "Communications with the Public"

December 31, 1997.

I. Introduction

On September 12, 1996, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 allow broker-dealers to establish reasonable procedures for reviewing registered representatives' communications with the public relating to their business. On November 7, 1996, the NYSE filed Amendment No. 1 to the proposal.³ The proposed rule

¹ 15 U.S.C. § 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 6, 1996 ("Amendment No. 1"). Amendment No. 1 makes technical revisions to clarify the proposed changes to NYSE Rules 440, "Books and Records," and 472, "Communications with the Public." Specifically, Amendment No. 1 modifies NYSE Rule 440 to indicate that members

Continued

¹ See Securities Exchange Act Release No. 39451 (December 15, 1997, 62 FR 67104 (December 23, 1997)).

² 15 U.S.C. 78o–3.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b–4(e).