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

1. Purpose

Pursuant to CBOE Rule 2.40, the Equity Floor Procedure Committee approved the following fees for the following option classes:

Option class	Market-maker surcharge (per contract)	Order book official brokerage rate (per contract) [4]
Barnes and Noble, Inc. (BKS)	$0.10	$0.00
Tyco (TYC)	0.02	0.00
Kerr-McGee Corp. (KMG)	0.10	0.00
Network Associates Inc. (CQM)	0.05	0.00
Associated First Capital Corp. (AFS)	.0.04	0.00
BankAmerica Corporation (BAC)	0.02	0.00
BP Amoco (BPA)	0.02	0.00
Sunrise Technology (RNU)	0.03	0.00
Sprint (PCS)	0.15	0.00
Cendant (CD)	0.07	0.00
National Discount Broker (NDB)	0.03	0.00
Abercrombie & Fitch (ANF)	0.13	0.00
ENZO Biochem (ENZ)	0.13	0.00
Checkfree (FCQ)	0.15	0.00
Neomagic Corp (GJQ)	0.22	0.00
Intimate Brands (IBI)	0.16	0.00
Maxtor Corp.	0.12	0.00
Amkor (QEL)	0.06	0.00
Ortel Corp. (OQE)	0.09	0.00
Data Dimensions	0.24	0.00

These fees will be effective as of May 1, 1999, and will remain in effect until such time as the Equity Floor Procedure Committee or the Board determines to change these fees and files the appropriate rule change with the Commission.

[4] The surcharge will be used to reimburse the Exchange for the reduction in the Order Book Official brokerage rate from $0.20 in the relevant option classes. Any remaining funds will be paid to Stationary Floor Brokers as provided in Exchange Rule 2.40.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b)(40) [5] of the Act because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

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

Written comments on the proposed rule change were neither solicited nor received.

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

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to section 19(b)(3)(A)(ii) [6] and subparagraph (f)(2) of Rule 19b–4 thereunder.[7] 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.[8]

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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–19 and should be submitted by June 15, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–13109 Filed 5–24–99; 8:45 am]

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[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41414; File No. SR–NASD–99–01]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Filing Fees Under the Corporate Financing Rule

May 17, 1999.

On January 11, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its regulatory subsidiary NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] On March 18, 1999, and March 23, 1999, NASD Regulation submitted to the Commission Amendment Nos. 1 and 2, respectively, to the proposed rule change.[3] In its filing, NASD Regulation proposed to amend Section 6 of Schedule A to the NASD By-Laws (''Section 6 of Schedule A'') and NASD Conduct Rule 2710 (the ''Corporate Financing Rule'') to simplify the fee structure for public offerings filed under NASD Conduct Rules 2710, 2720, and 2810. Notice of the proposal as contained in Amendment No. 2 was

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASD Regulation filed Amendment No. 1 which superseded the original rule filing in its entirety. *See* Letter from Joan C. Conley, Secretary, NASD Regulation, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated March 17, 1999; Amendment No. 2 also superseded Amendment No. 1 and the original rule filing in its entirety. *See* Letter from Joan C. Conley, Secretary, NASD Regulation, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated March 22, 1999.

published in the **Federal Register** on April 12, 1999 (''Notice'').[4] No comments were received on the proposal.

I. Description of the Proposal

The proposed rule change amends Section 6 of Schedule A to clarify the method of calculating the Corporate Financing filing fees by the Corporate Financing Department of NASD Regulation (''Department''). Presently, the Corporate Financing Rule requires that NASD members file most proposed public offerings with the Department. The Department reviews these filings prior to the commencement of the offering to determine whether the underwriting terms and arrangements are fair and reasonable pursuant to standards set forth in NASD Conduct Rules 2710, 2720, and 2810. The proposal amends certain of the NASD's rules to address problems with the manner in which the Department calculates the Corporate Financing filing fees.

Application of Fee to All Securities on Offering Document—Currently, offerings filed with the Department are charged a fee equal to $500 plus .01% of the gross dollar amount of the offering, not to exceed $30,500. The definition of the term ''gross dollar amount of the offering'' in Paragraph (a)(1) of Conduct Rule 2710 allows NASD Regulation to collect a fee on ''all securities offered to the public.'' This language is often interpreted by NASD members to impose a fee only with respect to those specific securities currently offered to the public by the NASD member filing a proposed offering, even when the issuer has included other securities on the same offering document for later public sale by the same or another NASD member. Further, in the case of securities registered with the SEC pursuant to Rule 415, NASD members have argued that the Department should recalculate the filing fee each time a shelf take down is made so that the NASD member is only responsible for that portion of the Corporate Financing filing fee that relates to that NASD member's specific shelf take down.

Accordingly, NASD Regulation proposes to amend Section 6(a) of Schedule A to clarify that the Corporate Financing filing fee will be calculated on the proposed maximum aggregate offering price[5] or other applicable value[6] of all securities included on a SEC registration statement or any other type of offering document—regardless of whether the securities are currently ''offered to the public.'' Further, NASD Regulation proposes to delete the definition of the term ''gross dollar amount of the offering'' in Paragraph (a)(1) of Conduct Rule 2710 because the calculation of the Corporate Financing filing fee in Section 6(a) of Schedule A will no longer be based on this term.

Calculation of Fee on Amendments—Section 6(b) of Schedule A currently requires that NASD Regulation collect an additional filing fee when an amendment to the offering document increases the number of securities being registered, regardless of whether there is any increase in the aggregate value of the securities that were included on the original offering document. This additional filing fee is calculated by multiplying the number of additional securities times their new offering price and charging a fee of .01% of this product, but not to exceed $30,500 for total filing fees for any offering filed. When an amendment decreases the maximum aggregate offering price for the whole offering (as well as increasing the number of securities offered), the collection of an additional filing fee by the Department is not always warranted. Conversely, the Department is currently prevented by the language of Section 6(b) of Schedule A from collecting an additional fee when the amendment increases the maximum aggregate offering price of the securities offered, but does not increase the number of securities.

The proposal would amend Section 6(b) of Schedule A to impose an additional fee on amendments only when there is an increase in the maximum aggregate offering price or other applicable value of all securities included on the offering document. Specifically, an additional filing fee would be imposed on amendments in the amount of .01% of the net increase in the maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement or included on any other type of offering document, with a maximum of $30,500 in total filing fees charged for any offering. However, no refund will be made as a result of a net decrease in the maximum aggregate offering price or other applicable value.

The proposed change to Section 6(b) of Schedule A would clarify that NASD Regulation recognizes that there can be a net increase in the maximum aggregate offering price or other applicable value of an offering registered with the SEC through an amendment to the registration statement or through ''any other change.'' The proposed language also treats as an amendment a net increase in the maximum aggregate offering price or other applicable value that is reflected in an SEC Rule 430A prospectus[7] or a related registration statement filed pursuant to SEC Rule 462(b).[8]

SEC Rule 457—NASD Regulation also proposes to eliminate Section 6(c) of Schedule A. Originally, this section referenced SEC Rule 457 for the calculation of the Corporate Financing filing fees in certain situations. Specifically, it requires that Corporate Financing filing fees be computed according to SEC Rule 457, to the extent that SEC Rule 457 is not inconsistent with Section 6 of Schedule A. NASD Regulation states that the proposed amendments to Section 6 of Schedule A would incorporate all necessary concepts for the calculation of such filing fees. Therefore, NASD Regulation proposes to eliminate Section 6(c) of Schedule A, as the reference to SEC Rule 457 is no longer necessary.

Elimination of Duplicate Provision—Section 6 of Schedule A and Paragraph

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[4] Securities Exchange Act Release No. 41248 (April 2, 1999), 64 FR 17707 (April 12, 1999) (File No. SR–NASD–99–01).

[5] The term ''proposed maximum aggregate offering price'' is the same term used in the fourth column of the fee table on the cover of SEC registration statement forms to identify registration statement.

[6] The inclusion of the words ''other applicable value'' is intended to cover debt securities or a situation in which the company only registers a dollar amount of securities without specifying the type of or number of securities being offered. This is the same value that would be included under the fourth column of the fee table titled '' proposed maximum aggregate offering price'' on the cover of SEC registration forms in the case where a debt issue or a dollar amount of securities is being registered with the SEC.

[7] SEC Rule 430A permits a registrant to omit certain information from a prospectus that is filed as part of a registration statement declared effective by the SEC if the omitted information is contained in a prospectus filed with the SEC pursuant to SEC Rule 424(b) or SEC Rule 497(h) within 15 business days after effectiveness. If the omitted information is not contained in a prospectus filed with the SEC within fifteen business days after effectiveness, it must be contained in an effective post-effective amendment to the registration statement. SEC Rule 430A permits a registrant to reflect in the prospectus filed pursuant to SEC Rule 424(b) or SEC Rule 497(h) or in a post-effective amendment to the registration statement a change in the volume of securities offered (if the total value of securities offered would not exceed that which was registered) or a change in the bona fide estimate of the maximum offering price range if the changes, in the aggregate, represent no more than a 20 percent change in the maximum aggregate offering price set forth in the fee table in the effective registration statement.

[8] SEC Rule 462(b) permits a registrant to file a registration statement that is effective upon filing if, among other things, the registration statement registers ''additional securities of the same class(es) as were included in an earlier registration statement for the same offering and declared effective by the Commission.''

(b)(10) of Conduct Rule 2710 include identical provisions that impose a fee on each filing in the amount of $500 plus .01% of the value of securities with a maximum filing fee limit of $30,500. NASD Regulation proposes to eliminate paragraph (b)(10) of Conduct Rule 2710 in its entirety because it duplicates Section 6 of Schedule A. NASD Regulation further believes that Schedule A is the more appropriate location for provisions that impose fees on NASD members.

Method for Submission of Filing Fees—The language of Sections 6(a) and 6(b) of Schedule A currently specifies that a filing fee will accompany an initial filing and amendments, in certain cases. The proposal would eliminate this language within these sections.

II. Discussion

The Commission has determined to approve the Association's proposal to amend Section 6 of Schedule A and NASD Conduct Rule 2710. The Commission believes that the proposal to amend Section 6 of Schedule A and NASD Conduct Rule 2710 to simplify the NASD's Corporate Financing filing fee structure for public offerings filed under NASD Conduct Rules 2710, 2720, and 2810 is consistent with Section 15A(b)(5)[9] of the Act in that it provides for the equitable allocation of reasonable dues, fees, and other charges among NASD members. The Commission also believes that the proposal to amend Sections 6(a) and 6(b) of Schedule A provides enhanced guidance to both NASD members and the Department's staff regarding the Corporate Financing filing fee structure. The Commission believes that the proposed amendment to Section 6(a) will facilitate the calculation of Corporate Financing filing fees by the Department and will remove disputes over filing fees that currently occur over whether securities included on an offering document are being currently ''offered to the public.'' The Commission believes that requiring NASD Regulation to do a piecemeal calculation of filing fees to account for each NASD member's shelf take down would be time consuming and cause accounting difficulties for the Department.

With respect to the proposed amendment Section 6(b) of Schedule A, the Commission believes that this amendment is also consistent with Section 15A(b)(5)[10] of the Act in that it provides for equitable allocation of filing fees charged for amendments of public offerings. The Commission notes that the Department will charge a maximum of $30,500 in total filing fees for reviewing any public offerings filed. The Commission recognizes that the potential effect of the proposed amendment to Section 6(b) of Schedule A is to decrease the total Corporate Financing filing fees collected for amendments filed. NASD represents that it will provide notice to NASD members of the uniform, no-refund policy of NASD Regulation regarding any amendments filed that may result in a decrease in the maximum aggregate offering price or other applicable value. The Commission believes that this clarification will eliminate further confusion among the NASD members as to whether a refund would be warranted in such case. For all the reasons set forth above, the Commission believes that the proposed amendment to Section 6(b) of Schedule A will provide for the equitable allocation of fees among NASD members.

The Commission also believes that the language of Sections 6(a) and 6(b) of Schedule A that currently specifies that a filing fee shall accompany an initial filing and amendments, in certain cases, should be deleted. The Commission believes that this deletion, which will provide NASD Regulation with greater flexibility respecting the manner in which filing fees are paid, is also consistent with a prior Commission order approving the NASD proposal implementing payment of the Corporate Financing filing fee by wire transfer.[11]

The Commission also believes that it is reasonable for NASD Regulation to eliminate Section 6(c) of Schedule A which referred to SEC Rule 457 for filing fee guidance. NASD Regulation represents that there is no longer a need for the Department to refer to SEC Rule 457 for guidance as to the calculation methodology of certain Corporate Financing filing fees. Instead, NASD Regulation represents that the Department may now refer to the amended Section 6 of Schedule A for computation guidance for the Corporate Financing filing fees. Based on a review of the proposed amendments to Section 6 of Schedule A, the Commission believes that this section incorporates all necessary concepts for the calculation of the Corporate Financing filing fees.

The Commission believes that the proposal to delete the definition of ''gross dollar amount of the offering'' in paragraph (a)(1) of NASD Conduct Rule 2710 is appropriate. Given that Section 6(a) of Schedule A will be amended as discussed above, the Commission agrees that the definition will no longer be applicable.

Further, the Commission agrees that NASD Regulation's proposal to delete NASD Conduct Rule 2710(b)(10) in its entirety is reasonable because it duplicates Section 6 of Schedule A. The Commission further believes that Schedule A, which incorporates all the rules relating to fees, is the more appropriate location for fee provisions imposed on NASD members.

III. Conclusion

The Commission finds that the proposed rule change, as amended, is consistent with the Act, and, particularly, with Section 15A thereof.[12] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation.[13]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NASD–99–01) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–13111 Filed 5–24–99; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3184]

State of Florida

Bay County and the contiguous counties of Calhoun, Gulf, Jackson, Walton, and Washington in the State of Florida constitute a disaster area as a result of damages caused by high wind, heavy rain, and flooding that occurred on May 7, 1999. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on July 15, 1999 and for economic injury until the close of business on February 14, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

[10] 15 U.S.C. 78*o*–3(b)(5).

[10] 15 U.S.C. 78*o*–3(b)(5).

[11] The NASD recently deleted Subsection (6)(c) of Schedule A to the NASD By-Laws and Subparagraph (b)(10)(C) of NASD Conduct Rule 2710, which mandated that Corporate Financing filing fees be paid in the form of a check or money order. The NASD also renumbered Subsection (6)(d) to Subsection (6)(c) of Schedule A to the NASD By-Laws. Securities Exchange Act Release No. 40706 (November 24, 1998), 63 F.R. 66618 (December 2, 1998) (File No. SR–NASD–98–87).

[12] 15 U.S.C. 78*o*–3.

[13] 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).