

examination and enforcement authority and responsibility. Additionally, NASD is charged with enforcing compliance with MSRB rules by its members, which responsibility includes review of NASD member activities in municipal securities through examinations and disciplinary actions. Because NASD does not receive any portion of fees that the MSRB collects from its members, NASD must fund its own regulatory costs. Furthermore, extension of the TAF to include corporate and municipal debt will not alter the fact that regulatory costs funded by the TRACE fee structure are not funded by any other NASD-imposed fees. Therefore, the Commission believes it is reasonable for NASD to extend the TAF to encompass corporate and municipal debt as described in the proposal. The Commission recognizes that the proposed rule change will, under certain circumstances, require payment of two TAFs. The Commission believes this is reasonable, however, because the transactions described by the commenters are two separate transactions and interactions with customers are the primary driver of the NASD's regulatory costs.⁴⁴

With regard to the commenters' assertions that the proposal will adversely affect retail-oriented firms, and that the TAF will penalize firms that engage in small transactions as opposed to those that engage in large, institutional transactions, the Commission believes that NASD has devised a cap that is reasonable, given that NASD represents that retail trades typically drive NASD's member regulatory costs, and that such costs do not increase exponentially as the number of shares and bonds increase. The Commission is satisfied that the cap is consistent with the standards delineated in Section 15A(b)(5) of the Act.⁴⁵ The Commission expects that the NASD will continue to monitor this aspect of the proposal to ensure that the imposition of the cap results in a TAF that remains consistent with the Act.

Regarding the commenters' assertion that the proposal lacks information on how the TAF will be implemented, the Commission believes NASD has adequately addressed this concern by stating that it expects to apply the TAF to equity and debt securities as consistently as possible, and offering to consider any information relevant to this issue before issuing a Notice to Members with respect to debt.

The Commission finds good cause to approve Amendment No. 1 before the

30th day after the date of publication of notice of filing thereof in the **Federal Register**. The NASD filed Amendment No. 1 in response to comments it received after the publication of the notice of filing of the proposed rule change.⁴⁶ Because Amendment No. 1 is responsive to the commenters' concerns and because it does not present any novel issues, the Commission finds good cause for accelerating approval of Amendment No. 1.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 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. Please include File Number SR-NASD-2003-201 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 No. SR-NASD-2003-201. 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 Room. Copies of the filing also will be available for inspection and copying at the principal office of NASD. 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-NASD-2003-201 and should be submitted on or before October 29, 2004.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁴⁷ that the proposed rule change (SR-NASD-2003-201) be, and it hereby is, approved, and that Amendment No. 1 be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4-2533 Filed 10-7-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50483; File No. SR-NASD-2004-118]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. To Introduce an Extranet Access Fee for Extranet Providers To Provide Direct Access Services for Nasdaq Market Data Feeds

October 1, 2004.

I. Introduction

On August 4, 2004, 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 introduce an access fee to be charged to extranet providers to furnish direct access services for Nasdaq market data feeds. The proposed rule change was published for notice and comment in the **Federal Register** on September 1, 2004.³ The Commission received two comment letters on the proposed rule change, both supporting the proposal.⁴

⁴⁷ 15 U.S.C. 78s(b)(2).

⁴⁸ 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. 50262 (August 25, 2004), 69 FR 53480.

⁴ See letter from Scott Feier, Vice President, Fidelity Investments, to Jonathan G. Katz, Secretary, Commission, dated September 1, 2004; and letter from P. Howard Edelstein, President and CEO, Radianz Americas Inc., to Jonathan G. Katz, Secretary, Commission, dated September 22, 2004.

⁴⁴ NASD Response Letter at 5.

⁴⁵ 15 U.S.C. 78o-3(b)(5).

⁴⁶ See footnote 5, *supra*.

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,⁵ and, in particular, the requirements of Section 15A(b)(5) of the Act.⁶ The Commission believes that the proposed rule change will result in the equitable allocation of a reasonable fee among extranet service providers furnishing direct access services for Nasdaq market data feeds. The Commission notes that Nasdaq plans to use the proposed fee to support Nasdaq's costs associated with establishing and maintaining multiple extranet connections, the costs for republishing, increased network monitoring and maintenance costs, and new administrative and operational costs.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NASD-2004-118) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. E4-2535 Filed 10-7-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50465; File No. SR-OCC-2003-09]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Relating to Minimum Net Capital Requirements for Appointed Clearing Members

September 29, 2004.

I. Introduction

On August 22, 2003, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-OCC-2003-09 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the

⁵ 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).

⁶ 15 U.S.C. 78o-3(b)(5).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

Federal Register on April 1, 2004.² No comment letters were received. On September 28, 2004, OCC filed Amendment No. 1 to the proposed rule change. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The proposed rule change specifies minimum net capital requirements for Appointed Clearing Members, which are OCC clearing members that facilitate stock settlement for other clearing members. OCC's by-laws define an "underlying security" with respect to physically settled stock options and stock futures to mean the security or other asset that OCC is obligated to sell or purchase upon exercise or maturity of the contract. Normally, underlying securities are delivered and paid for through the facilities of the National Securities Clearing Corporation ("NSCC"), and clearing members that are eligible to clear and carry stock options and stock futures contracts must be NSCC participants except as otherwise provided in OCC's rules. OCC's by-laws and rules permit a clearing member ("Appointing Clearing Member") that is not an NSCC member to appoint another clearing member ("Appointed Clearing Member") that is an NSCC member to deliver and to receive underlying securities and to effect payment on their behalf through the facilities of NSCC.

In connection with providing stock settlement services, an Appointed Clearing Member may be subject to increased risk. As a result, OCC has determined that Appointed Clearing Members should be required to maintain a specified minimum amount of net capital in order to perform such services. Therefore, OCC is implementing new Rule 309A that will apply to Appointed Clearing Members the minimum net capital standards that currently are applied to Managing Clearing Members in facilities management arrangements in Rule 309. This minimum net capital standard will require every Appointed Clearing Member to maintain net capital of not less than the greater of (i) the minimum net capital required under the provisions of OCC Rule 302 or (ii) the sum of (A) \$4,000,000 plus (B) \$200,000 times the number of Appointing Clearing Members in excess of four on whose behalf the Appointed Clearing Member effects settlements.³

² Securities Exchange Act Release No. 49478, (March 25, 2004), 69 FR 17258.

³ As originally filed the dollar amounts in (A) and (B) were \$2,000,000 and \$100,000. This was the

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.⁴ The Commission agrees with OCC that Appointed Clearing Members take on additional financial risk when they provide settlement services for Appointing Clearing Members. By increasing the minimum net capital requirement for Appointed Clearing Members, the proposed rule change is designed to provide OCC with additional assurances of Appointed Clearing Members' financial responsibility which should help OCC to better protect itself and its members from any additional risk posed by Appointed Clearing Members. Accordingly, the proposed rule change is designed to assure the safeguarding of securities and funds which are in OCC's custody or control or for which it is responsible.

OCC has requested that the Commission approve this proposed rule change prior to the thirtieth day after publication of notice of the filing. Because OCC's amendment (1) changed only the dollar amount of required capital and not the substance of the proposed rule change, (2) followed up on what OCC had stated it was going to do in its filing increasing the net capital requirement for Managing Clearing Members,⁵ (3) made the calculation of the net capital requirements for Appointed Clearing Members and Managing Clearing Members consistent, and (4) will help OCC to protect itself and its members from any additional risk posed by Appointing Clearing Members, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

subject of the amendment filed on September 28, 2004.

⁴ 15 U.S.C. 78q-1(b)(3)(F).

⁵ Securities Exchange Act Release No. 49843 (June 9, 2004), 69 FR 13744 (June 18, 2004) [File No. SR-OCC-2003-11].