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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50485; File No. SR-NASD-2003-201]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change, To Amend Schedule A of the NASD By-Laws To Adjust the Trading Activity Fee Rate, and To Add TRACE-Eligible and Municipal Securities as Covered Securities

October 1, 2004.

I. Introduction

On December 30, 2003, 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")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Schedule A of the NASD By-Laws to adjust the Trading Activity Fee ("TAF") rate for covered equity securities, and to assess the TAF on corporate debt securities that, under the Trade Reporting and Compliance Engine ("TRACE") rules, are defined as "TRACE-eligible securities" and municipal securities subject to the Municipal Securities Rulemaking Board ("MSRB") reporting requirements. The proposed rule change was published for notice and comment in the **Federal Register** on January 28, 2004.³ The Commission received 15 comment letters on the proposal.⁴ On May 20,

2004, NASD filed a response to comments, and simultaneously amended the proposal.⁵ The NASD provided additional information in a letter dated September 30, 2004 to clarify its response to comments on certain issues.⁶ This order approves the proposed rule change, and provides notice of filing and grants accelerated approval of Amendment No. 1.

II. Summary of Comments

The Commission received 15 comment letters on the proposed rule change.⁷ Two commenters support the reduction in TAF rates; the other commenters oppose the proposed rule change for varying reasons.⁸ The

2004; Richard F. Chapdelaine, Chairman, and August J. Hoerner, President, Chapdelaine & Co. ("Chapdelaine") dated February 16, 2004; Mary McDermott-Holland, Chairman of the Board, and John C. Giese, President and CEO, Security Traders Association ("STA"), dated February 19, 2004; Pamela M. Miller, Senior Vice President, Associated Bond Brokers, Inc. ("ABB") dated February 17, 2004; Robert Wolf, Managing Director, Global Head of Fixed Income, and Ray Ormerod, Executive Director, UBS Securities LLC ("UBS") dated February 18, 2004; O. Gene Hurst, Esq., Counsel for Wolfe & Hurst Bond Brokers, Inc. ("Hurst") dated February 20, 2004; Lynnette K. Hotchkiss, Senior Vice President and Associate General Counsel, and Michele C. David, Vice President and Assistant General Counsel, The Bond Market Association ("BMA") dated February 17, 2004; Kimberly Unger, Executive director, The Security Traders Association of New York, Inc. ("STANY") dated February 18, 2004; all of which were addressed to Jonathan G. Katz, Secretary, Commission. On June 16, 2004, George Miller and Lynnette Hotchkiss of The Bond Market Association submitted a memorandum to Annette Nazareth, Director, Division of Market Regulation, SEC. The Commission considers this memorandum to be a comment letter.

The Smith letter appears to be a template created by The Board Market Association. To the extent that the letter raised issues in an affirmative manner, the Commission considered the issues.

⁵ See May 19, 2004 letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, and attachments ("Amendment No. 1" or "NASD Response Letter"). In Amendment No. 1, NASD responded to the comments, and modified the proposal to clarify that the TAF will be assessed only on "TRACE-eligible securities" where the transaction also is a "reportable TRACE transaction," as those terms are defined in NASD Rule 6210. Additionally, because debt securities that are issued pursuant to Section 4(2) of the Securities Act of 1933 and re-sold pursuant to Rule 144A in secondary market transactions are "reportable TRACE transactions," NASD clarified that these debt transactions are subject to the TAF.

⁶ See letter from Kathleen O'Mara, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated September 30, 2004 ("NASD Response Letter 2").

⁷ See footnote, 4, *supra*.

⁸ One commenter expressed support for the proposed reduction in TAF rates, stating that the reduction "makes progress toward rebalancing the burden of the TAF currently placed on lower priced securities." STANY at 2. Another commenter expressed support for the NASD's proposal to revise

following is a summary of the major concerns that the commenters raised.

• *Imposition of the TAF is Inappropriate Because NASD Has not Provided Evidence to Justify the TAF, and NASD Already Imposes Fees Pursuant to its TRACE Fee Structure on the Same Transactions*

Several commenters believe the imposition of the TAF is unfair because NASD already imposes and collects fees under its TRACE fee structure on the same transactions.⁹ These commenters believe the NASD should not be allowed to impose additional fees on these transactions, and express disapproval that NASD has not provided justification for charging a second fee.¹⁰ They want NASD to provide justification for the TAF, and they specifically question what services the original fees have been used to support, the costs associated with those programs, the amount of overall revenue the NASD expects to collect from the TAF, and the additional costs to be supported by the TAF.¹¹ Similarly, several commenters believe NASD has not provided evidence to justify the imposition of a new fee.¹²

• *NASD Should Create an Exception for Intermediaries To Avoid Duplication of Fees and "Double Taxation"*

the TAF rates, but expressed no opinion about the portion of the proposal that would assess the TAF on TRACE-eligible securities and municipal securities. STA at 2.

⁹ See, e.g., CCS at 2; Rafferty at 2; Bear Stearns at 1; UBS at 1; BMA at 4. Additionally, some commenters expressed disapproval of the proposal because they believe there is "no necessity for any additional fees to be imposed upon the municipal securities industry" and because fees assessed by self-regulatory organizations ("SROs") should be coordinated across all such organizations with overlapping jurisdictions. See e.g., Hurst at 1, BMA at 5, Bear Stearns at 1.

¹⁰ See CCS at 2.

¹¹ See e.g., Rafferty at 2.

¹² See CCS at 2 ("* * * the industry has not received any evidence from the NASD that this fee is warranted."); Bear Stearns at 1 ("NASD's proposing release does not provide enough information regarding its regulatory costs and overall fees to evaluate the proposal to ensure that it complies with the legal requirements for imposing fees and other charges."); Chapdelaine at 2 ("* * * where is the NASD's justification for charging members dealing in municipal securities a TAF at the same rate it proposes to charge dealers in other fixed income markets?"); UBS at 1 (the NASD does not provide adequate information "to support a determination that the Debt TAF would result in an 'equitable allocation of reasonable dues' and otherwise satisfy the requirements of the Securities Exchange Act of 1934 * * *"); BMA at 2, 3 ("* * * the NASD has not provided the industry information that would establish a reasonable nexus between the regulatory costs it seeks to fund and the Debt TAF"); STANY at 2 ("We are unaware of any accounting done by the NASD, which shows revenue generated by transactions or the relationship between the 'taxed' transaction and the cost of regulation associated with those transactions.").

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 49114 (January 22, 2004), 69 FR 4194.

⁴ See letters from Paige W. Pierce, Chief Operating Officer, RW Smith & Associates, Inc. ("Smith") dated February 11, 2004; Richard F. Chapdelaine, Chairman of the Board, Chapdelaine Corporate Securities, & Co. ("CCS") dated February 12, 2004; Michael Rafferty, Rafferty Capital Markets, LLC ("Rafferty") dated February 17, 2004; Robert Beck, Principal, Municipal Securities, Edward D. Jones & Co., LP ("Edward Jones") dated February 17, 2004; Thomas S. Vales, Chief Executive Officer, TheMuniCenter ("TMC") dated February 18, 2004; Samuel C. Doyle, Executive Vice President, Kirkpatrick, Pettis, Smith, Polian, Inc. ("Kirkpatrick") dated February 17, 2004; Craig M. Overlander, Senior Managing Director, Bear, Stearns & Co. ("Bear Stearns") dated February 17,

Some commenters express disapproval of the proposal because they believe it will result in duplication of fees, also referred to as “double taxation.”¹³ For example, one commenter explains that it “acts as an intermediary, brokering transactions on an undisclosed basis for corporate and government products.” As a result, each of this commenter’s trades results in two reportable events, resulting in two fees. Under the NASD’s proposal, the TAF would be collected twice on what, according to the commenter, is the same transaction. The commenter notes that in addition to having such transaction “taxed” twice (once as a TRACE security and once by the TAF), two different parties are paying the same fees on the same transactions.¹⁴ To prevent this from occurring, the commenter suggests that the NASD create an exemption for those members acting as intermediary to ensure there is no duplication of fees.¹⁵

• *The TAF Is Improper Because MSRB Fees Adequately Allocate Costs to Municipal Finance Activity*

Similarly, several commenters believe the TAF is inappropriate because existing fees imposed by the MSRB already allocate costs to municipal finance activity.¹⁶ The commenters object to the NASD imposing additional fees on municipal securities because the MSRB currently “assesses transaction and other fees on municipal securities” and one commenter believes “a portion of such fees are remitted to the NASD to help defray the NASD’s costs in enforcing MSRB rules.”¹⁷ Another commenter states that “rulemaking and policymaking are regulatory functions delegated to the MSRB” and therefore the NASD cannot properly impose a fee on members dealing in municipal securities “at the same rate it proposes to charge dealers in other fixed income markets” when it has less regulatory

responsibility with respect to municipal securities.¹⁸

• *TAF May Have a Disparate Impact on Certain Firms and Investors, and Dealer-Banks Will Have an Unfair Competitive Advantage Because the TAF Will Not Be Imposed On Those Entities*

Several commenters claim the proposal will negatively affect retail-oriented firms and investors because the proposed cap reduces the effective fee per bond for larger transactions.¹⁹ Claiming the fee structure imposes a greater burden on retail firms and targets small transactions, the commenters argue that NASD has not adequately explained how the proposed structure for the TAF does not impose an unfair burden on competition or discriminate between market participants.²⁰ Additionally, commenters note that dealer-banks that deal in municipal securities are subject to MSRB rules but are not NASD members and therefore are not subject to NASD jurisdiction. As such, the TAF cannot be imposed on those entities. The commenters claim this would give those entities an unfair competitive advantage over NASD members dealing in municipal securities.²¹

• *The NASD’s Proposal Lacks Clarity in How the TAF Will Be Implemented*

Some commenters believe the proposal has not adequately addressed certain practical issues regarding how the TAF will be implemented. For example, one commenter believes the proposal is unclear “whether and to what extent current NASD guidance regarding the TAF for equity securities would or should apply to Covered Debt Securities.”²² Additionally, the commenter believes the proposal is

ambiguous as to whether compliance will require member firms to track transactions in covered debt securities differently than what is used for transaction reporting purposes.²³

III. NASD’s Response to Comments

In response to the commenters’ contention that (i) the proposed rule change does not contain sufficient financial information for the Commission to determine if the proposal meets the statutory standard delineated in Section 15A(b)(5),²⁴ which requires that the rules of an association provide for the equitable allocation of reasonable dues, fees, and other charges,” and (ii) that there is no nexus between the TAF and the regulatory costs it seeks to fund, the NASD states the proposal extends NASD’s pricing structure to TRACE-eligible securities and municipal securities, areas “over which NASD exercises primary examination and enforcement authority and responsibility.”²⁵ NASD maintains that such authority provides a direct nexus to the areas to which NASD proposes to extend the TAF.²⁶

Regarding the commenters’ concerns that (i) the proposed rule change would result in duplicative fees, and that it fails to consider existing regulatory fees and coordinate fees across all SROs that have overlapping jurisdiction; (ii) the MSRB provides rulemaking and policy functions for municipal securities, and the fees that the MSRB already assesses should be used to fund all regulation; and (iii) TRACE transaction fees currently include charges intended to recover costs incurred in the oversight of the corporate debt market, making the extension of the TAF to include TRACE-eligible securities unnecessary, NASD asserts that such concerns are misguided. NASD notes that it is responsible for enforcing MSRB rules with respect to its members,²⁷ which responsibility includes the supervision and regulation of member activities in municipal securities through examinations, financial monitoring, and disciplinary actions.²⁸ Given these responsibilities, NASD argues it must

¹³ See CCS at 3; Rafferty at 2–3; TMC at 1 (stating that TheMuniCenter, an alternative trading system, “will endure double transaction costs versus traditional players.”); Chapdelaine at 3; ABBI at 1 (“Presumably, the NASD would treat this agency function for debt securities in the same manner as equity transactions and exempt broker’s brokers from the proposed rule; however this subject is not addressed in the proposal.”); BMA at 4 (“* * * NASD should be required to establish that adding the Debt TAF on top of these existing fees does not result, in effect, in the ‘double taxation’ of Covered Debt Securities.”); Edward Jones at 2–3 (“* * * NASD’s proposal does not preclude the imposition of two charges on a transaction involving a sale by a customer to the Firm followed by the sale to another customer from the Firm’s inventory.”).

¹⁴ CCS at 3.

¹⁵ *Id.*

¹⁶ See e.g., Edward Jones at 2; Kirkpatrick at 1; Chapdelaine at 2; BMA at 4.

¹⁷ Kirkpatrick at 1.

¹⁸ Chapdelaine at 2. See also, generally, BMA at 4.

¹⁹ BMA at 5; Edward Jones at 2 (“* * * a cap of \$0.75 per trade would be applied uniformly to a firm effecting 1,000 trades of 10,000 bonds each and to a firm effecting 100 trades of 100,000 bonds each, thus resulting in fees to the firm doing the ‘smaller’ business that are 10 times larger than those charged to a firm doing the same amount of overall activity but with institutional clients.”); ABBI at 2 (“The rule, as proposed, would seem to unfairly target smaller * * * transactions as the maximum fee is \$.75 per trade * * *. We do not understand the rationale for this rate”).

²⁰ BMA at 5.

²¹ Chapdelaine at 2; BMA at 5. Once commenter also believes the proposal would not apply equally to similar types of securities, noting that corporate debt securities that have a maturity of one year or less at issuance are not ‘TRACE-eligible’ and would not be subject to the TAF. *Id.* The proposal contains no comparable exclusion for short-term municipal securities, even though municipal securities with a stated maturity of nine months or less are excluded from MSRB transaction assessments. *Id.*

²² UBS at 1–2.

²³ *Id.* See also BMA at 2, 6–9.

²⁴ 15 U.S.C. 78o–3(b)(5).

²⁵ NASD Response Letter at 3.

²⁶ *Id.* NASD further states it “need not specify costs and revenues on a product-by-product basis to demonstrate that the fee is consistent with Section 15A(b)(5) of the Act. *Id.*”

²⁷ MSRB rules govern transactions in municipal securities. Municipal securities dealers are regulated by either the Commission and the NASD or the bank regulators. See Sections 3(a)(34) and 15B of the Act. 15 U.S.C. 78c(a)(34) and 15 U.S.C. 78o–4.

²⁸ NASD Response Letter at 4.

directly fund its regulatory costs, for it receives no portion of the fees that the MSRB collects from the entities subject to its rules.²⁹ Additionally, NASD states that “regulatory costs currently funded by the TRACE fee structure are not funded by any other fees or assessments of NASD.”³⁰ NASD represents that extending the TAF to corporate and municipal debt will not change this scenario, and consequently, “NASD will not charge duplicative member regulatory fees on TRACE-eligible securities.”³¹

NASD notes that several commenters express concern that the TAF (i) will be assessed on multiple parties to a single transaction, (i) does not address competitive issues, and (i) will have a disparate impact on retail-oriented firms.³² In response, NASD readily acknowledges that two TAF fees will be assessed under certain circumstances. NASD states that this approach is consistent with how NASD assesses fees on covered equity securities, and states “interactions with customers are a primary driver of member regulatory costs.”³³ Because NASD devised the TAF to focus on a member firm’s individual trading activity, with the TAF being one component in NASD’s program to recover its regulatory costs, NASD acknowledges that member firms that engage regularly in transactions with customers will be assessed in accordance with trading activity and “in conformity with NASD’s member regulatory costs.”³⁴ Additionally, the NASD acknowledges that the proposed rule change may result in assessing higher aggregate fees on certain retail activity that occurs in numerous smaller trades, rather than if the same volume of activity occurred in a lesser number

of larger trades. However, the NASD states that retail trades “drive member regulatory costs as much as, if not more than, institutional trades,” resulting in higher member regulatory costs due to the higher number of transactions.³⁵ As a result, the NASD believes it has proposed fees that are fairly allocated among its membership and are “reflective of NASD’s regulatory functions, efforts, and costs.”³⁶ Regarding the commenters’ assertion that the TAF will result in disparities between fees imposed on bank municipal securities dealers that are not NASD members, NASD states it cannot “comment on the manner in which banking regulators assess their regulated institutions for the costs of oversight” and that “the TAF serves to recover NASD’s costs of member regulatory services in conformity with NASD’s statutory obligations.”³⁷

Finally, in response to commenters’ concerns that the TAF should be assessed only on TRACE-eligible securities subject to TRACE reporting requirements, NASD amended the proposed rule change to clarify that the TAF will apply to “TRACE-eligible securities” where the transaction also is a “reportable TRACE transaction,” as those terms are defined in NASD Rule 6210.³⁸ Also, because debt securities issued pursuant to Section 4(2) of the Securities Act of 1933 and re-sold pursuant to Rule 144A in secondary market transactions are “reportable TRACE transactions,” NASD further amended the proposed rule change to clarify that such debt transactions are subject to the TAF.³⁹

IV. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, the comment letters, and the NASD Response Letters, 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 association⁴⁰ and, in particular, the requirements of Section 15A(b)(5) of the Act.⁴¹ Section 15A(b)(5) requires,

among other things, that the rules of a 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. The Commission finds that the proposal to adjust the rate for covered equity securities, reduce the maximum per-trade charge on covered equity securities, and assess the TAF on certain corporate debt and municipal securities is consistent with Section 15A(b)(5) of the Act, in that the proposal is reasonably designed to recover NASD costs related to regulation and oversight of its members.

On May 30, 2003, the Commission approved SR–NASD–2002–148, a proposed rule change that eliminated the NASD’s Regulatory Fee and instituted a TAF, which proposal was part of the NASD’s plan to redesign its regulatory pricing structure to better align its fees with NASD’s functions, efforts, and costs.⁴² At that time, the Commission found that the TAF was consistent with Section 15A(b)(5) of the Act, and also indicated that, although the NASD then excluded debt, mutual funds, and variable annuities from the scope of the TAF, the NASD should consider ways to better allocate regulatory costs to encompass activity in all of the areas over which the NASD exercises oversight.⁴³ The Commission need not revisit the issue of whether the imposition of a TAF is consistent with the Act. The issue before the Commission is whether it is proper for the NASD to extend the TAF to include the types of securities described in the instant proposed rule change. For the reasons described herein, the Commission finds that such extension is consistent with the Act in general, and consistent with Section 15A(b)(5) in particular.

The Commission is satisfied that NASD has established a sufficient nexus between the proposed TAF extension to corporate debt securities that, under TRACE rules, are defined as “TRACE-eligible securities” and on municipal securities subject to MSRB reporting requirements, and the regulatory costs NASD seeks to fund with TAF-generated revenue. NASD, in its capacity as a national securities association, exercises primary

²⁹ NASD Response Letter at 4. NASD Response Letter 2 at 1–2 (“NASD is simply seeking to incorporate into its member regulatory pricing structure, a new transaction-based TAF to recover its member regulatory costs for, among other things, enforcing MSRB rules (including supervising and regulating its members’ activities in municipal securities through examinations, financial monitoring, and, as appropriate, disciplinary actions).”).

³⁰ NAS Response Letter at 4.

³¹ *Id.* See also NASD Response Letter 2 at 2 (“TRACE fees are used to fund the operation of the reporting system, development costs for the system, market operations, and market regulations * * *. TAF fees, however, are used to fund general member regulatory costs such as rulemaking (other than MSRM rulemaking), policy, examinations, processing membership applications, financial monitoring, and enforcement activity.”). The NASD considers these latter functions member regulation, which is distinct from its market regulation function.

³² NASD Response Letter at 5–7.

³³ NASD Response Letter at 5; NASD Response Letter 2 at 2.

³⁴ NASD Response Letter at 5.

³⁵ *Id.* at 7; NASD Response Letter 2 at 2 (“For example, the member regulatory costs related to 10,000 small retail bond trades is much greater than the member regulatory costs associated with one large bond trade.”)

³⁶ NASD Response Letter at 5.

³⁷ *Id.* at 5.

³⁸ *Id.* at 8.

³⁹ *Id.*

⁴⁰ 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).

⁴¹ 15 U.S.C. 78o–3(b)(5).

⁴² See Securities Exchange Act Release No. 47946 (May 30, 2003, 68 FR 34021 (June 6, 2003)) (SR–NASD–2002–148) (approval order); see also NASD Response Letter at 2. NASD represents that the new pricing structure is revenue neutral to NASD.

⁴³ See Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003) (SR–NASD–2002–148) (approval order).

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.

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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*.