

Participants to complete their negotiations regarding revenue sharing during the one-year pilot period. The January 1995 Extension Order approved the effectiveness of the Plan through August 12, 1995, and since that time the Commission has expected the Participants to conclude their financial negotiations promptly (at that time, before January 31, 1995), and to submit a filing to the Commission that reflected the results of the negotiations.⁵ To date, the Participants have not completed their financial negotiations.

Proposed Amendment No. 6 to the Plan would have extended the effectiveness and the negotiation period through December 29, 1995. In light of the lack of progress that has been made by the Participants in finalizing their negotiations, as evidenced by their failure to file a proposed amendment for revenue sharing under the Plan, the Commission believes it is appropriate only to approve the proposal partially by extending the effectiveness of the pilot program for an additional month. This should serve to continue the pilot program in place while the Commission awaits the requisite filing.⁶

II. Extension of Certain Exemptive Relief

In conjunction with the Plan, on a temporary basis scheduled to expire on November 12, 1995, the Commission granted an exemption from Rule 11Ac1-2 under the Act regarding the calculated best bid and offer ("BBO"), and granted the BSE an exemption from the provision of Rule 11Aa3-1 under the Act that requires transaction reporting plans to include market identifiers for transaction reports and last sale data. While the Participants have requested that these exemptions be extended through December 29, 1995, this order extends these exemptions only through December 12, 1995. Further, this extension will remain in effect only if the Plan continues in effect through that date pursuant to a Commission order.⁷

⁵ See January 1995 Extension Order, *id.*, at n. 6.

⁶ The NASD, in its letter attached to the present filing, states that all Plan Participants have made a good faith effort to reach a final agreement on revenue sharing under the Plan, but that the Chx has requested a limited amount of time to conclude internally its consideration of the most recent draft of the financial plan amendment. See letter from Robert E. Aber, NASD, to Jonathan Katz, Commission, dated November 9, 1995. The Participants are reminded that they currently are in violation of the Commission's August 1995 Extension Order that required the Participants to submit a filing concerning revenue sharing on or before August 31, 1995. The Commission continues to urge the Participants to comply with the Commission's request for the filing promptly.

⁷ In the October 1995 Extension Order, the Commission extended these exemptions from

The Commission continues to believe that exemptive relief from these provisions is appropriate through December 12, 1995.

III. Comments on the Operation of the Plan

In the January 1995 Extension Order, the August 1995 Extension Order, the September 1995 Extension Order, and the October 1995 Extension Order, the Commission solicited, among other things, comment on: (1) whether the BBO calculation for the relevant securities should be based on price and time only (as currently is the case) or if the calculation should include size of the quoted bid or offer; and (2) whether there is a need for an intermarket linkage for order routing and execution and an accompanying trade-through rule. The Commission continues to solicit comment on these matters.

IV. Solicitation of Comment

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. All submissions should refer to File No. S7-24-89 and should be submitted by December 15, 1995.

V. Conclusion

The Commission finds that proposed Amendment No. 6 to the Plan to extend the operation of the Plan and the financial negotiation period, but only for an additional month, is appropriate and in furtherance of Section 11A of the Act. The Commission finds further that extensions of the exemptive relief through December 12, 1995, as described above, also is consistent with the Act and the Rules thereunder. Specifically, the Commission believes

October 12, 1995, through November 12, 1995. Pursuant to a request made by the NASD, this order further extends the effectiveness of the relevant exemptions but only from October 12, 1995, through November 12, 1995. See letter dated November 9, 1995, *id.*

that these extensions should serve to provide the Participants with more time to conclude their financial negotiations and with more information to evaluate the effects of and proposed course of action for the pilot program. This, in turn, should further the objects of the Act in general, and specifically those set forth in Sections 12(f) and 11A of the Act and in Rules 11Aa3-1 and 11Aa3-2 thereunder.

The Commission currently believes, however, that extension beyond December 12, 1995, of the effectiveness of the Plan and the related exemptive relief is not necessary or in furtherance of the Act because such an extension would not maximize the incentives for the Participants to complete their negotiations and file a financial amendment to the Plan, as described above. Thus, the Commission believes that partial approval of the proposal by limiting the effectiveness of the present approval order through December 12, 1995, is appropriate.

It is therefore ordered, pursuant to Sections 12(f) and 11A of the Act and (c)(2) of Rule 11Aa3-2 thereunder, that Amendment No. 6 to the Joint Transaction Reporting Plan for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis is hereby partially approved and trading pursuant to the Plan is hereby approved on a temporary basis through December 12, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(29).

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-36486; File No. SR-MSRB-95-16]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by Municipal Securities Rulemaking Relating to Arbitration Rules

November 16, 1995.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 9, 1995, the Municipal Securities Rulemaking Board ("MSRB" or "Board") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the MSRB. 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

The Board proposes to amend Board rule G-35¹ ("Arbitration Code") by amending Section 25 of the Arbitration Code in order to conform that Section to its counterpart in the Uniform Code of Arbitration ("Uniform Code") developed by the Securities Industry Conference on Arbitration ("SICA").

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Rule G-35. Arbitration.

* * * * *

Section 25. Interpretation of Arbitration Code.

The [panel of] arbitrators shall be empowered to interpret and determine the applicability of all provisions under this Arbitration Code and to *take appropriate action to obtain compliance with any ruling by the arbitrator(s)*. [any s] Such interpretations [or determination] *and actions to obtain compliance* shall be final and binding upon the parties.

* * * * *

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 Board 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 Board 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

The purpose of the proposed rule change is to amend Section 25 of the Arbitration Code in order to conform it to section 22 of the Uniform Code. Consistent with the Uniform Code, the Board proposes to amend Section 25 in order to clarify and codify the arbitrators' existing authority to enforce their rulings in the event of non-compliance by a party. Appropriate arbitral action under this provision

could include the assessment of fees or costs, preclusion of documents or witnesses, or initiation of a disciplinary referral. Currently, such sanctions for non-compliance with the arbitrator's rulings are infrequently ordered or requested because the arbitrators and parties may be unaware of an arbitrator's power. It is expected that the arbitrators will exercise such power primarily in the area of failure to comply with discovery requests. As amended, Section 25 will specify that such arbitral rulings, as well as interpretations of the Uniform Code, will be final and binding upon the parties.

The proposed rule change is consistent with Sections 15B(b)(2)(C) and 15B(b)(2)(D) of the Act. Section 15B(b)(2)(C) requires, in pertinent part, that the Board's rules be designed:

to promote just and equitable principles of trade . . . to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. . . .

Section 15B(b)(2)(D) provides that the Board shall, if it deems appropriate:

provide for the arbitration of claims, disputes, and controversies relating to transactions in municipal securities: Provided, however, That no person other than a municipal securities broker, municipal securities dealer, or person associated with such a municipal securities broker or municipal securities dealer may be compelled to submit to such arbitration except at his instance and in accordance with section 29 of this title.

The proposed rule change will facilitate the just and timely resolution of disputes between customers and dealers, thereby furthering the Board's statutory mandate to protect investors and the public interest.

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

The Board does not believe that 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 Commission believes that the proposed rule change should be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act. In that

regard, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Board, and, in particular, the requirements of Sections 15B(b)(2)(C) and 15B(b)(2)(D) thereof. Specifically, the Commission concludes that accelerated effectiveness of the proposal is appropriate because the substantive amendments proposed in this rule change were previously proposed by other self-regulatory organizations ("SROs"), were not the subject of public comment, and have been approved by the Commission.² Because the proposal is designed to protect investors and the public interest by providing for uniformity in the rules governing the administration of arbitration facilities offered by the SROs, the Commission finds good cause for approving the foregoing rule change on an accelerated basis prior to the thirtieth day after the date of publication thereof in the Federal Register.

IV. Solicitation of Comment

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 in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of MSRB. All submissions should refer to file number SR-MSRB-95-16 and should be submitted by December 15, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act³ that the proposed rule change SR-MSRB-95-16, amending Section 25 of the Arbitration

² See, e.g., Securities Exchange Act Release No. 35263 (Jan. 23, 1995), 60 FR 5741 (Jan. 30, 1995) (order granting accelerated approval to SR-CBOE-94-51); Securities Exchange Act Release No. 34344 (July 11, 1994), 59 FR 36453 (July 18, 1994) (order approving SR-MSE-93-9); Securities Exchange Act Release No. 31464 (Nov. 16, 1992), 57 FR 55011 (Nov. 23, 1992) (order approving SR-NASD-92-33).

³ 15 U.S.C. 78s(b)(2).

¹ MSRB Manual, General Rules, Rule G-35 (CCH) ¶ 3671.

Code in order to conform that Section to the Uniform Code, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-36490; File No. SR-NASD-95-52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Gross Income Assessments for Member Firms

November 16, 1995.

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 November 3, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under § 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. 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

Pursuant to the provisions of Section 19(b)(1) under the Act, the NASD is herewith filing a proposed rule change to Section 1(c) of Schedule A to the NASD By-Laws to revise the credit allowed to members against the annual assessment on their gross income. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Schedule A to the NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of the Corporation, shall be determined on the following basis.

Section 1—Assessments

Each member shall pay an annual assessment composed of:

* * * * *

(c) Members shall receive a credit against the annual assessment on gross

income stated in paragraph (a) above as follows:

(i) Portion of assessment > \$5,000 – [25]23%

(ii) Portion of assessment > \$25,000 – [5]4% additional

(iii) Portion of assessment > \$50,000 – 5% additional

(iv) Portion of assessment > \$100,000 - [5]4% additional

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 NASD 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 NASD 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

Pursuant to Article VI of the By-Laws of the Corporation, the NASD requires its members to pay an annual assessment fee, as defined by Schedule A, Section 1 to the By-Laws ("Schedule A"). NASD members are required under Section 1(a) of Schedule A to pay an amount equal to the greater of \$850.00 or the total of a specified percentage of their annual gross income from securities transactions.¹ NASD members also receive, pursuant to Section 1(c) of Schedule A, a credit against the annual assessment on their gross income imposed under Section 1(a) of Schedule A. The Schedule A, Section 1(c) credit to members is calculated by a tiered discount structure that is intended to address, to some extent, the regulatory subsidy provided by larger NASD firms.

The NASD recently has reviewed its fee structure in order to further align revenues with the cost of providing particular services to members. The proposed rule change would amend Section 1(c) of Schedule A to revise the

¹ Schedule A, Section 1(a) requires NASD members to pay an amount equal to the greater of \$850.00 or the total of: (i) 0.125% of annual gross revenue from state and municipal securities transactions; (ii) 0.125% of annual gross revenue from other over-the-counter securities transactions; (iii) 0.125% of annual gross revenue from U.S. Government securities transactions; and (iv) with respect to members whose books, records and financial operations are examined by the NASD, 0.125% of annual gross revenue from securities transactions executed on an exchange.

credit allowed to members against the annual assessment on their gross income under Section 1(a) of Schedule A as follows:

(i) Portion of assessment > \$5,000 – [25]23%

(ii) Portion of assessment > \$25,000 – [5]4% additional

(iii) Portion of assessment > \$50,000 – 5% additional

(iv) Portion of assessment > \$100,000 – [5]4% additional

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges in that the proposed rule change equitably adjusts fees and assessments to conform to the NASD's projected 1995 budget.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of Rule 19b-4 thereunder in that it constitutes a due, fee or other charge.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the 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