

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, N.W., Washington, D.C. 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 in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of such filing also will be available for inspection and copying at the principal office of EMCC. All submissions should refer to File No. SR-EMCC-99-2 and should be submitted by May 3, 1999.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (File No. SR-EMCC-99-2) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41248; File No. SR-NASD-99-01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc.; Relating to the Filing Fees Under the Corporate Financing Rule

April 2, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 11, 1999, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary NASD Regulation, Inc. ("NASD Regulation"), 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 NASD Regulation. 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 The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, 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 Section 6 of Schedule A to the NASD By-Laws and NASD Conduct Rule 2710 to simplify the fee structure for public offerings filed under NASD Conduct Rules 2710, 2720, and 2810. Below is the text of the proposed rule change. Proposed new language is in italics; 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-Section 5

No change.

Section 6—Fees for Filing Documents Pursuant to the Corporate Financing Rule

(a) [The] *There shall be a fee imposed for the filing of initial documents relating to any offering filed with the NASD pursuant to the Corporate Financing Rule [shall be accompanied by a filing fee] equal to \$500 plus .01% of the [gross dollar amount of the offering,] proposed 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 (where not filed with the SEC), but shall not [to] exceed [a fee of] \$30,500. The amount of filing fee may be rounded to the nearest dollar.*

(b) [Amendments] *There shall be an additional fee imposed for the filing of any amendment or other change to the*

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.

[initially filed documents which increase the number of securities being offered] *documents initially filed with the NASD pursuant to the Corporate Financing Rule [shall be accompanied by an additional amount of filing fee] equal to .01% of the [per share offering price of the new or additional securities, multiplied by the number of new or additional securities being offered,] net increase in the maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement, or any related SEC Rule 462(b) registration statement, or reflected on any SEC Rule 430A prospectus, or included on any other type of offering document. However, the aggregate of all filing fees paid in connection with an SEC registration statement or other type of offering document shall not [to] exceed \$30,500 [when aggregated with all fees previously paid].*

[(c) the provisions of Rule 457 adopted under the Securities Act of 1933, as amended, shall govern the computation of filing fees for all offerings filed pursuant to this Section, including intrastate offerings, to the extent the terms of Rule 457 are not inconsistent with this Section.]

Section 7-Section 15

No change.

* * * * *

2710. Corporate Financing Rule—Underwriting Terms and Arrangements
(a) Definitions

For purposes of this Rule, the following terms shall have the meanings stated below. The definitions in Rule 2720 are incorporated herein by reference.

[(1) Gross Dollar Amount of the Offering]

[Public offering price of all securities offered to the public and securities included in any overallotment option, the registration price of securities to be paid to the underwriter and related persons, and the registration price of any securities underlying other securities;]

(2)–(6) renumbered (1)–(5)

(b) Filing Requirements

(1)–(9)

No change.

[(10) Filing Fees]

[(A) The initial documents relating to any offering filed with the Association pursuant to this Rule shall be accompanied by a filing fee equal to \$500 plus .01% of the gross dollar amount of the offering, not to exceed a fee of \$30,500. The amount of filing fee may be rounded to the nearest dollar.]

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

[(B) Amendments to the initially filed documents which increase the number of securities being offered shall be accompanied by an additional amount of filing fee equal to .01% of the per share offering price of the new or additional securities, multiplied by the number of new or additional securities being offered, not to exceed \$30,500 when aggregated with all fees previously paid.]

[(C) The provisions of SEC Rule 457 adopted under the Securities Act of 1933, as amended, shall govern the computation of filing fees for all offerings filed pursuant to this Rule, including intrastate offerings, to the extent the terms of Rule 457 are not inconsistent with subparagraph (A), (B) or (C) above.]

(11)–(13) renumbered (10)–(12)

(c) No change.

* * * * *

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

In its filing with the Commission, NASD Regulation 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. NASD Regulation has prepared summaries, set forth in Sections A, B, 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

NASD Conduct Rule 2710 (the "Corporate Financing rule") requires that NASD members file most proposed public offerings with the Corporate Financing Department ("Department") of NASD Regulation. The Department reviews these filings in order 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 prior to the commencement of the offering.

Certain aspects of the existing process by which Corporate Financing filing fees (as defined below) are calculated create unnecessary inefficiencies in the handling of such fees by NASD Regulation. NASD Regulation is proposing to amend its rules, as discussed below, to address these

problems with respect to the Corporate Financing filing fees.

Elimination of Duplicate Provision—Section 6 of Schedule A to the NASD By-Laws ("Section 6 of Schedule A") and Paragraph (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 (the "Corporate Financing filing fee"). NASD Regulation now 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 specify that a filing fee will accompany an initial filing and amendments, in certain cases. NASD Regulation is proposing to eliminate this language so that it can have greater flexibility with respect to the manner in which filing fees are paid.⁴

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 only 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 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 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 takedown is made so that the NASD member is only responsible for the Corporate Financing filing fee that relates to the NASD member's specific shelf takedown. Such a piecemeal calculation of filing fees would be time-consuming and cause accounting difficulties.

⁴ NASD Regulation recently deleted Subsection (b)(c) of Schedule A to the NASD By-Laws and Subparagraph (b)(10)(C) of Conduct Rule 2710, which had mandated that Corporate Financing filing fees be paid in the form of a check or money order. See Securities Exchange Act Release No. 40706 (November 24, 1998), 63 FR 66618 (December 2, 1998).

NASD Regulation proposes to amend Section 6(a) to Schedule A to clarify that the Corporate Financing filing fee will be calculated on the proposed maximum aggregate offering price (or other applicable value) of all securities included on an SEC registration statement or any other type of offering document—regardless of whether the securities are to be currently "offered to the public." 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 the total of the proposed public offering price of all securities to be registered on that registration statement. 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 security. This is the same value that would also 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.

The NASD believes that this clarification will facilitate the calculation of Corporate Financing filing fees and remove issues of dispute that currently occur over whether securities included on an offering document are being currently "offered to the public." Since the calculation of the Corporate Financing filing fee will no longer be based on the "gross dollar amount of the offering," this definition is proposed to be eliminated in Paragraph (a)(1) of NASD Conduct Rule 2710.

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 decreases 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 fee is calculated by multiplying the number of additional securities times their new offering price, and charging a fee of .01% of this product (with a limitation of \$30,500 in total fees with respect to any offering filed). When such 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 fee by the Department is not always warranted. Conversely, the Department is currently prohibited 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.

NASD Regulation is proposing to amend Section 6(b) of Schedule A to impose an additional fee for 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. Thus, an additional filing fee would be imposed 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 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 clarifies 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 language also treats as an amendment a net increase in the maximum aggregate offering price or other applicable value that is reflected on an SEC Rule 430A prospectus⁵ or filed in a related registration statement pursuant to SEC Rule 462(b).⁶

SEC Rule 457—Section 6(c) of Schedule A 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. Originally, the Corporate Financing filing fee rule referenced SEC Rule 457 in order to calculate the Corporate Financing file fees in certain situations. The amendments proposed herein to the Corporate Financing filing fee rule would incorporate all necessary concepts for the calculation of such filing fees. Therefore, NASD Regulation proposes to eliminate Section 6(c), as the reference to SEC Rule 457 is no longer necessary.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5)⁷ of the Act, which requires that the rules of a national securities association provide for the equitable allocation of reasonable dues, fee, and other charges among members. NASD Regulation believes that the proposed rule change provides for the equitable allocation of the fees paid by members in connection with the submission of proposed public offerings to the Department for review

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

NASD Regulation 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.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written date, views, and

arguments concerning the foregoing including whether the proposal 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 in 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-99-01 and should be submitted by May 3, 1999.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41242; File No. SR-OCC-98-04]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Concerning Required Clearing Fund Contributions

April 1, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on April 13, 1998, The Options Clearing corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on March 22, 1999, amended the proposed rule change (File No. SR-OCC-98-04) as described in Items I and II below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposal.

⁵ 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.

⁶ 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 with the Commission."

⁷ 15 U.S.C. 78o-3(b)(5).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).