

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48448; File No. SR-NASD-2003-136]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to NASD Rules 1013 and 1140

September 4, 2003.

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 August 29, 2003, the National Association of Securities Dealers, Inc. ("NASD") 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. NASD has designated the proposed rule change as constituting a "non-controversial" rule change pursuant to Rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. 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

NASD is proposing to amend NASD Rule 1013 to eliminate the requirement that new member applicants include in their membership applications signed, paper Forms U4 for each proposed associated person who is required to be registered under NASD Rules and, instead, to require new member applicants to file these Forms U4 electronically. NASD is also proposing to amend Rule 1140 to require new member applicants to follow the same procedures members must follow when making electronic Form U4 filings. In addition, NASD is proposing technical changes to Rules 1013 and 1140. Below is the text of the proposed rule change. New text is in *italics*. Proposed deletions are in [brackets].

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1000. Membership, Registration and Qualification Requirements

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¹ 15 U.S.C. 78s(b)(1).
² 17 CFR 240.19b-4.
³ 17 CFR 240.19b-4(f)(6).

1013. New Member Application and Interview

(a) Filing of Application

(1) Where to File

An Applicant for [Association] NASD membership shall file its application with the Department of Member Regulation at the district office in the district in which the Applicant intends to have its principal place of business as defined in Rule 1011(1).

(2) Contents

The application shall include:

(A) an original signed and notarized paper Form BD, with applicable schedules;

[(B) an original signed paper Form U-4 for each Associated Person who is required to be registered under the Rules of the Association;]

(C) through (H) Renumbered as (B) through (G).

[(I)] (H) documentation of any of the following events, unless the event has been reported to the Central Registration Depository:

(i) through (ii) No change.
(iii) an investment-related customer complaint or arbitration that is required to be reported on Form U4 [U-4];

(iv) through (v) No change.
(J) through (S) Renumbered as (I) through (R).

(3) Electronic Filings

Upon approval of the Applicant's Web CRD entitlement request form, the Applicant shall submit its *Forms U4 for each Associated Person who is required to be registered under NASD Rules*, any amendments to its Forms BD or U4 [U-4, any additional Forms U-4], and any Form U5 [U-5] electronically via Web CRD.

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(4) through (7) No change.
(b) No change.

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1140. Electronic Filing Rules

(a) through (b) No change.

(c) Form U4 [U-4] Filing

Requirements

(1) [Initial and transfer electronic application filings] *Every initial and transfer electronic Form U4 filing shall be based on a signed Form U4 [U-4] provided to the member or applicant for membership by the person on whose behalf the Form U4 is being filed [applicant]. As part of the member's recordkeeping requirements, it shall retain the [applicant's] person's signed Form U4 [U-4] and make it available promptly upon regulatory request. An applicant for membership also must*

retain every signed Form U4 it receives during the application process and make them available promptly upon regulatory request.

(2) Fingerprint Cards

Upon filing an electronic Form U4 [U-4] on behalf of [an applicant] *a person applying for registration, a member shall promptly submit a fingerprint card for [the applicant] that person.* NASD [Regulation] may make a registration effective pending receipt of the fingerprint card. If a member fails to submit a fingerprint card within 30 days after NASD [Regulation] receives the electronic Form U4 [U-4], the person's registration shall be deemed inactive. In such case, NASD [Regulation] shall notify the member that the person must immediately cease all activities requiring registration and is prohibited from performing any duties and functioning in any capacity requiring registration. NASD [Regulation] shall administratively terminate a registration that is inactive for a period of two years. A person whose registration is administratively terminated may reactivate the registration only by reapplying for registration and meeting the qualification requirements of the applicable provisions of the Rule 1020 Series and the Rule 1030 Series. Upon application and a showing of good cause, [the Association] NASD may extend the 30-day period.

(d) through (e) No change.

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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 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

1. Purpose

NASD staff has been working to make its membership application process more efficient and less burdensome for applicants. As part of that effort, NASD staff proposes to eliminate Rule 1013's current requirement that an applicant for NASD membership submit with its membership application an original,

signed paper Form U4 for each of the applicant's proposed associated persons who are required to be registered with NASD. Instead, the proposed rule change will require that, upon approval of the applicant's Web CRD entitlement request form, the applicant will file such Forms U4 electronically via Web CRD.

NASD Rule 1013(a)(3) already requires that an applicant, upon approval of its Web CRD entitlement request form, electronically submit any amendments to its filed Form BD and Forms U4 and any additional Forms U4 or Forms U5 not submitted with the membership application. By extending the electronic filing requirement to include all Form U4 filings an applicant must submit in connection with its membership application, the proposed rule change allows an applicant to use one unified process for all its Form U4 submissions in the membership application process and reduces the amount of paperwork the applicant must submit with its membership application.

The proposed change will also lessen the burden on NASD staff receiving the membership application because it will eliminate the need to separate the Forms U4 from the membership application material and route them to the appropriate office for review and entry into the Web CRD system. Also, because the proposed change will result in the applicant filing the Forms U4 directly with Web CRD, NASD Web CRD staff will not experience any delays that might occur from the routing process.

In connection with the new electronic Form U4 filing requirement, NASD is also proposing to amend Rule 1140 to apply to applicants the same electronic filing requirements that members must follow when filing electronic Forms U4. Currently, Rule 1140 requires that every electronic Form U4 filing made by a member be based on a signed Form U4 provided by the associated person. Rule 1140 also requires that the member, as part of its recordkeeping requirements, retain the signed Forms U4 and make them available promptly upon regulatory request. The proposed changes to Rule 1140 will require an applicant to follow these same procedures when making electronic Form U4 filings. These requirements will help ensure that associated persons have reviewed and accepted the information and representations provided with the electronic Form U4.

Finally, the proposed rule change makes several technical changes to Rules 1013 and 1140. First, the references in these rules to "Form U-4" and "Form U-5" are being changed to

"Form U4" and "Form U5," respectively.⁴ Second, Rule 1011(a) defines "applicant" to mean either a person applying for NASD membership under Rule 1013 or a member filing an application under Rule 1017 for approval of a change in ownership, control, or business operations. However, the current use of the term "applicant" in Rule 1140 is inconsistent with this definition because it currently uses the term "applicant" to refer to the person on whose behalf the electronic Form U4 filing is being made. Accordingly, the rule change would replace references to "applicant" in Rule 1140 with references to persons on whose behalf Forms U4 filings are being made, as appropriate. Finally, NASD no longer refers to itself or its subsidiary, NASD Regulation, Inc., using its full corporate name, "the Association," "the NASD" or "NASD Regulation." Instead, NASD uses the name "NASD" unless otherwise appropriate for corporate or regulatory reasons. Accordingly, the proposed rule change replaces, as a technical change, several references to "the Association" and "NASD Regulation" in Rules 1013 and 1140 with the name "NASD."

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁵ which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change amends NASD Rule 1013 to eliminate the requirement that new member applicants include in their membership applications signed, paper Forms U4 for each proposed associated person who is required to be registered under NASD Rules and, instead, to require new member applicants to file these Forms U4 electronically. The proposed rule change also amends Rule 1140 to require new member applicants to follow the same procedures members must follow when making electronic Form U4 filings. In addition, the proposed rule change makes certain

⁴ This change is being made in accordance with SR-NASD-2003-57 (Rule Change to Revise Uniform Application for Securities Industry Registration or Transfer (Form U-4) and Uniform Termination Notice for Securities Industry Registration (Form U-5)), which changed the references for Forms "U-4" and "U-5" to "U4" and "U5." SEC Release No. 34-48161 (July 10, 2003) 68 FR 42444 (July 17, 2003).

⁵ 15 U.S.C. 78o-3(b)(6).

technical changes to Rules 1013 and 1140.

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

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 proposed rule change has been filed by NASD as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act⁶ and Rule 19b-4(f)(6) thereunder.⁷ Consequently, because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, and NASD provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

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.

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

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

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-2003-136 and should be submitted by October 2, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-23153 Filed 9-10-03; 8:45 am]

BILLING CODE 8010-01-P

SMALL BUSINESS ADMINISTRATION (SBA)

Office of Chief Financial Officer (OCFO); Notice of Intent To Establish the U.S. Small Business Administration's Audit and Financial Management Advisory Committee and Request for Membership Applications

SUMMARY: The U.S. Small Business Administration (SBA) announces its intent to establish the Audit and Financial Management Advisory Committee (AFMAC or "the Committee"). Accordingly, the SBA publishes this notice in compliance with the Federal Advisory Committee Act, as amended, (FACA) (Pub. L. 92-463-5 U.S.C. App. 2). The purpose of AFMAC is to provide recommendations and advice regarding the Agency's financial management including the financial reporting process, systems of internal controls, audit process, and process for monitoring compliance with relevant laws and regulations. The SBA Administrator has determined that the establishment of the Committee is in the public interest because it supports proper disclosure and transparency of SBA's financial management. SBA requests applications from qualified individuals and organizations to serve on the Committee. All notices for AFMAC meetings will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For additional information or a membership application, contact Thomas A. Dumaresq, Chief Financial Officer, 409

Third Street, SW.; telephone (202) 205-6449.

SUPPLEMENTARY INFORMATION: AFMAC shall be comprised of at least three members, including one Chairperson, as determined by the SBA's Administrator, who are free from any relationship that would interfere with the exercise of independent judgment as a member of the Committee. Committee membership must be fairly balanced and diverse in terms of occupational background and type of financial expertise. Committee members must have sufficient financial knowledge and experience to enable them to discharge the AFMAC's duties. Each member must be able to: (i) Understand federal financial statements; and (ii) recognize factors affecting the quality of SBA's financial reporting as a basis to make meaningful recommendations about the agencies audited financial statements and related financial management policy. SBA will view very favorably candidates possessing a broad accounting background, extensive financial management expertise, and/or significant experience with federal financial management.

Any qualified individual or organization interested in serving on the Committee should contact SBA for a membership application.

Scott R. Morris,

Deputy Chief of Staff.

[FR Doc. 03-23115 Filed 9-10-03; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

Notice of Advisory Council Public Meeting

The Small Business Administration Region 5 Wisconsin District Advisory Council, located in the geographical area of Milwaukee, Wisconsin, will hold a public meeting at 12 noon on Wednesday, September 17, 2003, at the metro Milwaukee Area Chamber Building 756 North Milwaukee Street 4th Floor, Milwaukee, WI 53202 to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

Anyone wishing to make an oral presentation to the Board must contact Yolanda Staples Lassiter, EDA, in writing by letter or by fax at (202) 481-5885 no later than September 15, 2003, in order to be put on the agenda. For further information, write or call Yolanda Staples Lassiter, EDA U.S. Small Business Administration, 310 West Wisconsin Ave., Suite 400

Milwaukee, Wisconsin 53203, (414) 297-1090.

Scott Morris,

Deputy Chief of Staff.

[FR Doc. 03-23114 Filed 9-10-03; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Disclosure of Additional Fees, Charges and Restrictions on Air Fares in Advertisements, Including "Free" Airfares

This notice is intended to give further guidance to air carriers and other sellers of air transportation on how those additional taxes, fees, and restrictions that are permitted to be listed separately from a fare quotation may be disclosed in advertisements.¹ This guidance will be used by the Office of Aviation Enforcement and Proceedings in its compliance and enforcement activities associated with 14 CFR 399.84, the Department's full fare advertising rule, and 49 U.S.C. 41712, which prohibits unfair and deceptive practices.

As permitted by Department rules, interpretive guidance, and enforcement case precedent, advertisements of air fares frequently do not state the full price charged the consumer, but instead quote a base fare and break out the fees and taxes that are permitted to be separately stated.² Substantial restrictions that apply to the advertised fare, which must be disclosed under Department rules and case precedent, are also generally listed separately. We are concerned that, in some instances, including in print advertisements, the notice of separately stated fees and restrictions is not adequate to alert consumers to the existence and nature

¹ See earlier guidance, most recently the notice dated January 18, 2001, as well as earlier notices, available at <http://airconsumer.ost.dot.gov/rules.htm>.

² While 14 CFR 399.84 requires that any advertisement of an air fare which quotes a price must state the full price to be charged the consumer, a number of exceptions have been recognized in the Department's enforcement case precedent and in advisory letters to the industry. For example, the Department has allowed taxes and fees collected by carriers and other sellers of air transportation to be stated separately in fare advertisements so long as the charges are levied by a government entity, are not *ad valorem* in nature, and are collected on a per-passenger basis (e.g., passenger facility charges and departure taxes). The existence and amount of these additional charges, however, must be clearly indicated in the advertisement so that the consumer can determine the full fare to be paid.

¹⁰ 17 CFR 200.30-3(a)(12).