

will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

14. Any sales charges and/or service fees (as those terms are defined in NASD Conduct Rule 2830) charged with respect to Shares of an SG Trust will not exceed the limits set forth in NASD Conduct Rule 2830 applicable to a fund of funds (as defined in NASD Conduct Rule 2830).

15. The SG Trusts and SG Cowen will comply in all respects with the requirements of rule 14a-3 under the Act, except that the SG Trusts will not restrict their portfolio investments to "eligible trust securities."

16. No fee, spread, or other remuneration shall be received by the SG Cowen in connection with the deposit of the Reference Securities and Derivatives with an SG Trust.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47936; File No. SR-NASD-2003-57]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, Amendment No. 1, and Amendment No. 2 Thereto by the National Association of Securities Dealers, Inc. Relating to Revisions to the Uniform Application for Securities Industry Registration or Transfer (Form U-4) and Uniform Termination Notice for Securities Industry Registration (Form U-5)

May 28, 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 April 8, 2003, 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 NASD. On April 16, 2003, NASD submitted Amendment No. 1 to the proposed rule change.³ On April 30,

2003, NASD submitted Amendment No. 2 to the proposed rule change.⁴ 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 is proposing to revise the Uniform Application for Securities Industry Registration or Transfer ("Form U-4") and Uniform Termination Notice for Securities Industry Registration ("Form U-5") to: (1) Add disclosure questions to the "Regulatory Disciplinary Actions" subsection of section 14 (Disclosure Questions) of the Form U-4 to elicit information regarding events that might cause a person to be subject to a statutory disqualification as a result of additional categories of statutory disqualification in the Act created by passage of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act"); (2) add a Disclosure Reporting Page ("DRP") and a question to the Form U-5 that parallels the Form U-4 DRP relating to terminations for cause; (3) streamline the language associated with questions on the Form U-4 relating to fingerprinting requirements; and (4) make certain technical, clarifying, and conforming changes to facilitate accurate reporting and filing.

The text of the proposed rule change and the Exhibits related thereto are available at the principal offices of NASD and at the Commission.

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 the 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 has prepared

Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), SEC, dated April 16, 2003 ("Amendment No. 1"). In Amendment No. 1, NASD stated that the rule filing would be effective on July 14, 2003, instead of June 30, 2003.

⁴ See letter from Patrice M. Gliniecki, Vice President and Deputy General Counsel, NASD, to Katherine England, Assistant Director, Division, SEC, dated April 29, 2003 ("Amendment No. 2"). In Amendment No. 2, NASD amended the filing to correct typographical errors on pages 51 of 100 and 68 of 100 of the filing. On page 51 of 100, the NASD added the following language to renumbered question 14D(1)(e): "denied, suspended, or revoked your registration license or." On page 68 of 100, the NASD eliminated the word "or" before "commodities exchange."

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. Purpose⁵

The Form U-4 is the Uniform Application for Securities Industry Registration or Transfer. Representatives of broker-dealers and investment advisers must use this form to become registered in the appropriate self-regulatory organizations ("SROs"). The Form U-5 is the Uniform Termination Notice for Securities Industry Registration. Broker-dealers and investment advisers must use this form to terminate registration of an individual in the various SROs and jurisdictions. (Form U-4 and Form U-5 are together hereinafter referred to as the "Forms.")

The proposed revisions to the Forms would (1) Add disclosure questions to the "Regulatory Disciplinary Actions" subsection of Section 14 (Disclosure Questions) of the Form U-4 to elicit information regarding events that might cause a person to be subject to a statutory disqualification as a result of additional categories of statutory disqualification in the Act created by passage of the Sarbanes-Oxley Act; (2) add a DRP and a question to the Form U-5 that parallels the DRP and Form U-4 question relating to terminations for cause; (3) streamline the language associated with questions on the Form U-4 relating to fingerprinting requirements; and (4) make certain technical, clarifying, and conforming changes on the Forms to facilitate accurate reporting.⁶

⁵ The NASD requested that the Commission make certain non-substantive organizational changes to the Purpose section (and the corresponding numbered introductory text throughout the notice). In addition, the NASD requested that the Commission include footnotes in the notice that specifically provide the new definitions for the following new defined Form U-4 terms: (1) "Affiliated Firm;" (2) "Federal Banking Agency;" and (3) "Final Order." Telephone conference between Shirley H. Weiss, Office of General Counsel, NASD Regulation, Richard E. Pullano, Chief Counsel and Associate Director, CRD/Public Disclosure, NASD Regulation, Elizabeth Badawy, Senior Policy Liaison, Division, Commission, and Christopher B. Stone, Special Counsel, Division, Commission (May 22, 2003).

⁶ On April 6, 2003, the North American Securities Administrators Association, Inc. ("NASAA") voted to approve the proposed listed Forms revisions at its Membership meeting.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Patrice M. Gliniecki, Vice President and Deputy General Counsel, NASD, to

New Disclosure Questions Required by Enactment of the Sarbanes-Oxley Act

Section 604 of the Sarbanes-Oxley Act amended the Act by adding new categories of "statutory disqualification." Under the expanded definition, members and their associated persons may be subject to a statutory disqualification (*i.e.*, may be required to obtain regulatory approval before becoming a member of NASD or becoming associated with an NASD member) if they are subject to certain orders issued by a state securities commission or state insurance commissioner (or any agency or officer performing like functions); state authorities that supervise or examine banks, savings associations, or credit unions; an appropriate federal banking authority, or the National Credit Union Administration. Specifically, persons (including members) may be subject to a statutory disqualification based on orders issued by the above agencies that (1) bar a person from association or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities or (2) are based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.⁷

The Form U-4 has historically been the vehicle for the reporting of events that may cause a person to become subject to statutory disqualification. NASD generally takes the lead in amending the Forms. Accordingly, with the concurrence of a working group of regulators, including state regulators, representatives of other SROs, and SEC observers, NASD is proposing to amend section 14 (Disclosure Questions) of the Form U-4 to elicit reporting of regulatory actions that may now make individuals subject to a statutory disqualification under the expanded definition of "statutory disqualification" in the Act created by passage of the Sarbanes-Oxley Act.

The proposed rule change renumbers current Regulatory Action Disclosure Question 14D on the Form U-4 as Question 14D(1), adds Question 14D(2) to mirror the language in section 15(b)(4)(H) of the Act,⁸ and modifies the "Regulatory Action DRP" on the Forms. To aid in reporting events under Question 14D(2), NASD proposes amending the "Specific Instructions" section of the Form U-4 with respect to section 14 (Disclosure Questions). NASD proposes adding two new

defined terms, "final order"⁹ and "federal banking agency,"¹⁰ to the "Explanation of Terms" section of the Form U-4. NASD also proposes amending the "Regulatory Action" DRP on the Form U-4 to aid in reporting events required to be reported pursuant to the Sarbanes-Oxley Act.

Form U-5 DRP and Question Addition Relating to Terminations for Cause

NASD proposes adding to the Form U-5 a new disclosure question (Question 7F) and corresponding DRP to mirror Question 14J on the Form U-4. This question would allow firms to report that an individual was terminated after allegations of certain violations, fraud, wrongful taking of property, or failure to supervise, and would further clarify the individual's obligation to report the termination on the Form U-4. Currently, NASD staff must rely on the reason for termination or a firm-initiated internal review as reported (by the former employing firm) on an individual's Form U-5 to determine whether that individual is required to answer Question 14J (on the Form U-4) affirmatively. The new Question 7F on the Form U-5 should clarify for NASD staff and terminated individuals the basis for and circumstances surrounding the termination (and whether it requires an affirmative answer on the corresponding Form U-4 question) and will enable firms appropriately to identify and provide supporting details regarding terminations for cause. Similarly, NASD proposes adding "resign or resigned" as an explained term on the Form U-5 to parallel the same term on the Form U-4 for purposes of the new Question 7F.

Modifications to the Form U-4 Relating to Fingerprinting Requirements

NASD proposes to streamline the language associated with questions under section 2 (Fingerprint Information) and section 6 (Registration Requests with Affiliated Firm) on the Form U-4 to clarify fingerprinting requirements, including electronic filing representations, exceptions to the fingerprint requirement, and fingerprint requirements for investment adviser

representative only applicants. In conjunction with the proposed changes relating to the fingerprint questions, NASD is proposing to amend the "Specific Instructions" section of the Form U-4 with respect to section 2 (Fingerprint Information) and Section 6 (Registration Requests with Affiliated Firms).

Under section 2 (Fingerprint Information), NASD proposes to modify the "Electronic Filing Representation" subsection to address two situations that are not adequately covered by the current language. The first involves a firm's submitting fingerprint results on behalf of an individual whose fingerprints were processed through another SRO, in lieu of submitting fingerprint cards. The second occurs when a firm is seeking registration for an individual who (1) is currently employed by the firm (usually in an unregistered capacity) and (2) previously has been fingerprinted (either through NASD or another SRO).

The current electronic filing representation states that the firm is submitting or will promptly submit fingerprint cards as required by applicable SRO rules. In the two situations described above, firms will not be submitting fingerprint cards contemporaneously with, or within 30 days of, filing a Form U-4. The proposed language will allow firms and individuals to represent that the filing firm has continuously employed the individual since the last submission of a fingerprint card to NASD (and therefore is not required to resubmit a card at this time) or has continuously employed the individual since the individual had his or her fingerprints processed through another SRO, and the individual will submit (or has submitted) the processed results to the Central Registration Depository ("CRD") system.

Also, under section 2 (Fingerprint Information), NASD proposes to modify the "Exceptions to the Fingerprint Requirement" subsection. Currently, firms can claim an exception to the fingerprint requirement by affirming that the individual has been continuously employed by the filing firm in an unregistered capacity (and had previously submitted a fingerprint card in connection with that employment) or meets one or more exemptions under SEC Rule 17f-2.¹¹ The proposed modification to the "Exceptions to the Fingerprint Requirement" questions would allow a firm to select the specific permissive exemption under SEC Rule 17f-2(a)(1)(i)

⁷ Section 15(b)(4)(H) of the Act, 15 U.S.C. 78o(b)(4)(H).

⁸ *Id.*

⁹ The new term "final order" is to be defined in the Form U-4 as follows: FINAL ORDER, for purposes of Question 14D(2), means a written directive or declaratory statement issued by an appropriate federal or state agency (as identified in Question 14D(2)) pursuant to applicable statutory authority and procedures, that constitutes a final disposition or action by that federal or state agency.

¹⁰ The new term "federal banking agency" is to be defined in the Form U-4 as follows: FEDERAL BANKING AGENCY shall include any Federal banking agency as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

¹¹ 17 CFR 240.17f-2.

and/or (a)(1)(iii).¹² Additional proposed changes to section 2 (Fingerprint Information) will clarify fingerprint filing requirements for investment adviser representative only applicants.

Individuals use the Form U-4 to register with states in an investment adviser representative capacity (shown as "RA" on the Form U-4). Some states have advised NASD that individuals are confused about which radio button¹³ to select when applying solely for registration as an investment adviser. In some cases, these individuals have previously submitted a fingerprint card for registration with a broker-dealer. NASD proposes to amend the "Investment Adviser Representative Only Applicants" section by adding additional instructions under the heading "Fingerprint Information for Affiliated Firms" that will explain the fingerprint filing requirements for these applicants.

The proposed language will clarify the circumstances under which an individual may need to file a fingerprint card when submitting an application for state licensure as an investment adviser representative notwithstanding having previously submitted a fingerprint card with an unaffiliated broker-dealer. The proposed language will also address situations in which an investment adviser representative previously has satisfied a state fingerprint requirement by allowing the representative to make that representation on the Form U-4.¹⁴

Under section 6 (Registration Requests With Affiliated Firms) of the Form U-4, NASD is proposing to add a fingerprint question to section 6 (Registration Requests with Affiliated Firms) on the Form U-4 to create appropriate options for individuals requesting new registrations with a firm

¹² SEC Rule 17f-2, 17 CFR 240.17f-2, governs the fingerprinting requirements of securities personnel. SEC Rule 17f-2(a)(1)(i), 17 CFR 240.17f-2(a)(1)(i), permits an exemption for persons who are not engaged in the sale of securities; do not regularly have access to the keeping, handling, or processing of securities, monies, or books and records; and do not have supervisory responsibility over persons engaged in such activities. SEC Rule 17f-2(a)(1)(iii), 17 CFR 240.17f-2(a)(1)(iii), generally exempts the partners, directors, officers, and employees of a broker-dealer that is engaged exclusively in the sales of certain securities, such as variable contracts, limited partnership interests, and unit investment trusts.

¹³ A "radio button" is a navigation and selection device that allows a filer to select a particular option in an electronic filing environment.

¹⁴ This addition should be particularly helpful to investment adviser representatives who became licensed in a jurisdiction through the submission of a hard copy Form U-4 before that jurisdiction accepted electronic filings via the Investment Adviser Registration Depository and who are now being "transitioned" onto an electronic system via an electronically filed Form U-4 amendment.

affiliated with the filing firm.¹⁵ The proposed "Electronic or Other Filing Representation" subsection will provide three additional radio buttons. Filers can select the current standard representation (*i.e.*, "I am submitting, have submitted, or promptly will submit to the appropriate SRO a fingerprint card * * *"). In the alternative, the proposed representations would enable the individual to indicate that (1) he or she has been employed continuously by the filing firm since the last submission of a fingerprint card and he or she is not required to resubmit a fingerprint card; or (2) the individual has been employed continuously by the filing firm and his or her fingerprints have been processed by an SRO other than NASD and the individual is submitting, has submitted, or promptly will submit the processed results for posting to the CRD. Section 6 (Registration Requests With Affiliated Firms) will also contain a radio button that allows the applicant to select an exemption to the fingerprint requirement pursuant to SEC Rule 17f-2.¹⁶

Conforming Changes

(1) NASD proposes replacing all references to "NASD Regulation" or "NASD Regulation, Inc." with "NASD" consistent with NASD's current corporate structure. NASD also proposes changing "U-4" to "U4" and "U-5" to "U5."

(2) NASD proposes making grammatical and other modifications that will make the Form U-4 and Form U-5 more consistent and better clarify the disclosure information that is required to be reported on the Forms. For example, NASD proposes rewording the summary field of the DRPs on the Form U-4 and Form U-5 to emphasize that those fields are optional for comments by representatives and firms, respectively.

(3) NASD proposes modifying the Customer Complaint DRP on both Forms to distinguish the fields that are required for reporting a customer complaint, arbitration and/or litigation. The proposed changes add instructions and rearrange the questions in a more logical order; however, the content of the customer complaint disclosure question and DRP fields will not change.

(4) NASD proposes revising the language in Question 14F (on Form U-

¹⁵ The new term "Affiliated Firm" is to be defined in the Form U-4 as follows: AFFILIATED FIRM means a broker-dealer under common ownership or control with the filing firm.

¹⁶ 17 CFR 240.17f-2.

4) to clarify the intent of the reporting obligation.¹⁷

(5) NASD proposes changes to the current hair and eye color codes to match the codes used by the Federal Bureau of Investigation's fingerprint system.

(6) NASD proposes other consistency changes that relate to bolding or highlighting certain instructions in the DRPs to facilitate appropriate reporting on the Forms.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6)¹⁸ of the Act, which requires, among other things, that the Association's rules 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. NASD believes that the proposed rule change is designed to accomplish these ends by making changes to the Forms that would (1) add disclosure questions to elicit reporting of events that may cause a person to be subject to a statutory disqualification as a result of the expansion of the federal definition of statutory disqualification based on the enactment of the Sarbanes-Oxley Act; (2) add a DRP and a question to the Form U-5 (new Question 7F) that parallels Question 14J on the Form U-4 DRP relating to terminations for cause; (3) streamline the language associated with questions on the Form U-4 relating to fingerprinting requirements; and (4) make other technical, clarifying, and conforming changes that are intended to facilitate accurate reporting.

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.

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.

¹⁷ Currently, Question 14F asks, "Has your authorization to act as an attorney, accountant or federal contractor ever been revoked or suspended?" The proposed Question 14F asks, "Have you ever had an authorization to act as an attorney, accountant or federal contractor that was revoked or suspended?"

¹⁸ 15 U.S.C. 78o-3(b)(6).

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 NASD consents, the Commission will:

A. by order approve such proposed rule change, as amended, or

B. institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2003-57 and should be submitted by June 25, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47930; File No. SR-NASD-2003-66]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. To Rebate Certain Past Primex Auction System Logon Charges for Certain Participants

May 27, 2003.

On April 2, 2003, 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 rebate certain past Primex Auction System ("Primex") logon charges for certain participants. Specifically, Nasdaq proposes to modify NASD Rule 7010(r) to enable Nasdaq to waive all Primex logon charges for the period of August 2002 through November 2002 for participants who, in connection with their participation in Primex during that period, were customers of the Brass Service Bureau and Order Management System ("Brass").

The proposed rule change was published for comment in the **Federal Register** on April 24, 2003.³ The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁴ Specifically, the Commission finds that the proposed rule change promotes the objectives of Section 15A(b)(5) of the Act⁵ which requires that the rules of the association provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Commission believes that the proposed waiver of certain Primex logon charges for the named period is equitable because Primex participants, who are users of Brass, were unable to route orders to Primex and were therefore

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 47692 (April 17, 2003), 68 FR 20197 (April 24, 2003).

⁴ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78o-3(b)(5).

effectively unable to use the full range of Primex services.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change (SR-NASD-2003-66) be, and hereby is, approved.

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

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03-13944 Filed 6-3-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47925; File No. SR-NASD-98-80]

Self-Regulatory Organizations; Order Granting Approval to the Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3, 4, and 5 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. to Establish a Two-Year Pilot Program Relating to the Issuance of Temporary Cease and Desist Orders

May 23, 2003.

On October 28, 1998, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder.² Under its proposal, NASD establishes procedures to enable it to issue temporary cease and desist orders. The proposed rule change and Amendment No. 1³ to the proposal were published for comment in the **Federal Register** on December 30, 1998.⁴ The Commission received five comment letters on the proposal.⁵ On May 17, 1999, August 19,

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The first amendment to the proposal included changes to the evidentiary standard and the tenure of a temporary cease and desist order. See Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 15, 1998 ("Amendment No. 1").

⁴ Securities Exchange Act Release No. 40826 (December 22, 1998), 63 FR 71984. On December 22, 1998, the NASD submitted a written extension of time for the public comment period as Amendment No. 2. The amendment is not subject to notice and comment. See Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated December 21, 1998.

⁵ See Letters to Jonathan G. Katz, Secretary,

¹⁹ 17 CFR 200.30-3(a)(12).