

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55360; File No. SR-NASD-2007-006)

February 27, 2007

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for Filing Documents Pursuant to the Corporate Financing Rule

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 24, 2007, the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared substantially by NASD. NASD has designated this proposal as establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with 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 Section 7 of Schedule A to the NASD By-Laws to adjust fees for filing documents pursuant to NASD Rule 2710 (Corporate Financing Rule – Underwriting Terms and Arrangements). The text of the proposed rule change is available at NASD, the Commission’s Public Reference Room, and www.nasd.com/RulesRegulation/RuleFilings.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

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. 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

Under Section 7 of Schedule A to the NASD By-Laws, the current fee for filing offering documents with NASD pursuant to Rule 2710 (Corporate Financing Rule – Underwriting Term and Arrangements) is equal to \$500 plus .01% of the proposed maximum aggregate offering price or other applicable value of all securities registered, but not to exceed \$75,500.⁵ However, pursuant to the Commission's securities offering reform rulemaking ("Securities Offering Reform"),⁶ which became effective on December 1, 2005, Commission rules now permit, among other things, "well-known seasoned issuers" or "WKSIs" to file automatically effective shelf registration statements without specifying the amount or value of the securities that may be offered off the registration statement for up to three years. WKSIs are large issuers that generally must have either \$700 million of worldwide equity market capitalization or an aggregate of \$1 billion of non-convertible securities issued within the past three years.⁷

⁵ Thus, under Section 7 of Schedule A to the NASD By-Laws, fees are capped with respect to offerings with an aggregate offering price of \$750 million or more.

⁶ See Securities Exchange Act Release No. 52056 (July 19, 2005), 70 FR 44722 (August 3, 2005).

⁷ See Rule 405 under the Securities Act of 1933, 17 C.F.R. 230.405.

Most WKSIs are exempt from the shelf offering filing requirements under NASD Rule 2710(b)(7), which exempts an issuer that is eligible to use a Form S-3 or Form F-3 registration statement and has been a reporting company under Section 13(a) or 15(d) of the Act for at least 36 months. In addition, NASD has proposed amendments to Rule 2710 to expressly exempt WKSI shelf registration statements from the filing requirements of Rule 2710.⁸ Thus, NASD intends that only those WKSIs with a conflict of interest as defined under Rule 2720 will be required to file shelf registration statements with NASD.⁹ For these issuers filing documents with NASD pursuant to Rule 2720, NASD will review the proposed underwriting terms and arrangements to determine whether they comply with the substantive requirements of the rule, including limits on underwriting compensation and use of a qualified independent underwriter to provide a pricing opinion and conduct due diligence. Upon completion of the review, if the terms and arrangements comply with the rule, NASD will issue an opinion that it has no objection to the filing.

Section 7 of Schedule A to the NASD By-Laws provides that the fee imposed for filing documents required pursuant to Rule 2710 is based on the proposed maximum aggregate offering price or other applicable value of all securities registered on a Commission registration statement or included on any other type of offering document. However, because WKSIs are not required to specify a proposed maximum aggregate offering price or other applicable value on a registration statement, assessing NASD's fee has been problematic. In their filings pursuant to Rule 2710, most WKSIs provided a value of securities that will be offered at or above \$750

⁸ See SR-NASD-2004-022. Amendment No. 4 to SR-NASD-2004-022 was filed with the Commission on April 28, 2006. See Securities Exchange Act Release No. 50749 (November 29, 2004), 69 FR 70735 (December 7, 2004).

⁹ See NASD Rule 2720(m). Pursuant to Rule 2720(m), all offerings that are within the scope of Rule 2720 are required to be filed with NASD and have the fee paid as required by Rule 2710, even if the offering would be otherwise exempt from Rule 2710.

million, corresponding with the maximum filing fee. Since the Commission's Securities Offering Reform has been in effect, NASD has received 71 WKSI filings, of which 62 (or 87%) have provided a value of \$750 million or more.¹⁰ Nine (or 13%) have specified amounts of securities with an aggregate value of less than \$750 million; however, these issuers are eligible to amend their registration during the three year effective period to increase the value of securities registered. Given this activity, and the fact that a WKSI shelf registration filing allows the issuer to offer securities on a registration statement for a three year period in amounts above \$750 million, NASD is imposing the maximum filing fee on all WKSI filings.¹¹

Accordingly, NASD proposes to amend Section 7 of Schedule A to the NASD By-Laws expressly to require that offering documents that are required to be filed with NASD relating to an automatically effective shelf registration statement by a WKSI (which would currently include all WKSIs not otherwise exempt from Rule 2710 and, if SR-NASD-2004-022 is approved by the Commission, would only include WKSIs that are broker-dealers or affiliates of broker-dealers)¹² must be accompanied by a \$75,500 fee.

NASD has filed the proposed rule change for immediate effectiveness. The implementation date will be February 26, 2007.

¹⁰ As noted above, under Commission rules, a WKSI registration statement is not required to state a specific value of securities. Nevertheless, for purposes of NASD's filing requirements, a value must be provided, and most issuers have indicated that they intend to offer at least \$750 million.

¹¹ NASD's electronic filing system does not track subsequent amendments to WKSI registration statements to determine whether new securities have been registered by an amendment, thereby increasing the size of the offering. Moreover, if multiple members participate in takedowns of securities off of a WKSI shelf registration statement over time, no one member would have the ability to track the aggregate value of the securities sold by the multiple members and ensure that the proper filing fee is paid in connection with the offerings.

¹² Telephone conversation between Kathryn Moore, Assistant General Counsel, NASD, and Commission staff on February 26, 2007.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with Section 15A(b)(5)¹³ of the Act, which requires that NASD rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that NASD operates or controls. NASD believes that the proposed rule change, which specifies the filing fee required for shelf offerings by WKSIs where no proposed maximum aggregate offering or other applicable value of all securities registered is required to be stated, is necessary to ensure the appropriate review of offerings by WKSIs under NASD rules.

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

NASD does not believe that the proposed rule change will impose 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

NASD has neither solicited nor received comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and subparagraph (f)(2) of Rule 19b-4 thereunder¹⁵ in that it establishes or changes a due, fee, or other charge imposed by NASD. At any time within 60 days of the filing of such 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.¹⁶

¹³ 15 U.S.C. 78o-3(b)(5).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(2).

¹⁶ See 15 U.S.C. 78s(b)(3)(C).

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. 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-2007-006 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2007-006. 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 offices 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-2007-006 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Florence E. Harmon
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).