burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[8]

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[9] of the Act and Rule 19b–4(f)(6) thereunder.[10]

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. 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–2007–036 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–2007–036. 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 such filing also will be available for inspection and copying at the principal office 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 the File Number SR–NASD–2007–036 and should be submitted on or before July 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–11441 Filed 6–13–07; 8:45 am]

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[8] 15 U.S.C. 78a.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55886; File No. SR–NASD–2007–027]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to SEC Section 31-Related Fees

June 8, 2007.

On April 17, 2007, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposal to allow member firms to voluntarily submit, within six months of the effective date of the proposal, funds previously accumulated by member firms to satisfy their, and subsequently NASD's, obligation to remit SEC Section 31-related fees, to NASD. The proposed rule change was published for comment in the **Federal Register** on May 9, 2007.[3] The Commission received one comment letter regarding the proposal.[4] This order approves the proposed rule change.

Pursuant to Section 31 of the Act[5] and SEC Rule 31,[6] NASD and the national securities exchanges (collectively ''SROs'') are required to pay a transaction fee to the SEC that is designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. To offset this obligation, NASD assesses its clearing and self-clearing members a regulatory fee in accordance with Section 3 of Schedule A of the NASD By-Laws, which mirrors the SEC Section 31 fee in scope and amount. Clearing members may in turn seek to charge a fee to their customers or correspondent firms. Any allocation of the fee between a clearing member and its correspondent firm or customer is the responsibility of the clearing member.

NASD states that reconciling the amounts billed by NASD to member firms and the amounts collected by member firms from their customers historically has been difficult, causing surpluses to accumulate at some member firms (referred to as ''accumulated funds''). These accumulated funds were not remitted to NASD, despite the fact that these charges may have been previously identified as ''Section 31 Fees'' or ''SEC Fees'' by certain firms.[7]

Prompted by a November 2004 Commission letter requesting an NASD analysis of and plan for addressing the accumulated funds issue, NASD surveyed 240 member clearing and self-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 55697 (May 2, 2007), 72 FR 26432 (May 9, 2007).

[4] *See* Letter from Mary Yeager, Assistant Secretary, New York Stock Exchange LLC (''NYSE'') to Nancy M. Morris, Secretary, Commission, dated June 5, 2007 (''NYSE Comment'').

[5] 15 U.S.C. 78ee.

[6] 17 CFR 240.31.

[7] NASD's rule also previously referred to this fee as an ''SEC Transaction Fee.'' The SEC stated in its release adopting new Rule 31 and Rule 31T that ''it is misleading to suggest that a customer or [self-regulatory organization] member incurs an obligation to the Commission under Section 31.'' Securities Exchange Act Release No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004). In response to this statement, NASD amended its rule to refer to this fee as a ''Regulatory Transaction Fee.'' *See* Securities Exchange Act Release No. 50274 (August 26, 2004), 69 FR 53757 (September 2, 2004) (SR–NASD–2004–129). Further, NASD issued guidance to ensure there is no confusion in the marketplace regarding NASD's ''Regulatory Transaction Fee'' and the ''SEC's Section 31 Fee.'' *See Notice to Members* 05–11 (February 2005) and *Notice to Members* 04–63 (August 2004).

clearing firms to review their practices regarding the collection of such fees from customers, discovering that over half of the firms surveyed did not have an accumulated funds balance. NASD worked with the other SROs to recommend a potential solution to allow NASD member firms to resolve title to the accumulated funds and, in the process, concluded that it would be virtually impossible to return customer-related accumulated funds to the customers that had paid these funds to the firms.[8]

Consequently, NASD has proposed interpretive material (''IM'') that will allow firms, on a one-time-only basis, voluntarily to remit historically accumulated funds (collected for purposes of paying an ''SEC Fee'' or ''Section 31 Fee'') to NASD. These funds then would be used to pay NASD's current Section 31 fees in conformity with prior representations made by member firms. To the extent the payment of these historically accumulated funds is in excess of the fees due the SEC from NASD under Section 31 of the Act, such surplus would be used by NASD to offset other NASD regulatory costs. The effective date of the proposed rule change is December 8, 2007, six months following the date of this approval order. Moreover, the IM will automatically sunset on June 8, 2008, six months after the effective date.

The Commission received one comment letter regarding the proposed rule change, from NYSE. NYSE acknowledged that the proposal provides ''member firms a ready and efficient means'' for dealing with accumulated funds but questioned ''whether there is a nexus between amounts accumulated by NASD member firms and sales effected through facilities of the NASD or Nasdaq (prior to the separation of NASD from Nasdaq and Nasdaq's registration as an exchange)'' and whether it would be feasible for member firms to correlate each execution market with a specific portion of the accumulated funds held by the firm.[9] As a result, NYSE argued that ''the fairest way to address this issue is for all exchanges to adopt procedures similar to those in the [NASD proposal], and to allow a member firm to remit accumulated funds to any SRO of which it is a member'' and indicated its intention to submit a proposed rule change similar to the NASD proposal that would allow NYSE members and member organizations to remit all or a portion of their accumulated funds to the NYSE to permit the Exchange to make payments required by Section 31.[10]

After carefully considering the proposal and the comment submitted, 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.[11] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[12] which requires, among other things, that NASD 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 Commission believes that this NASD program will provide a reasonable means for member firms to dispose of any accumulated funds they may have in their possession.[13] The Commission notes that, because the program is voluntary, it imposes no obligation on any NASD member that believes that accumulated funds should be retained or disposed of in another manner. The NYSE Comment does not raise any issue that would preclude approval of the NASD proposal.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (File No. SR–NASD–2007–027) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant delegated authority.[15]

Nancy M. Morris,

Secretary.

[FR Doc. E7–11504 Filed 6–13–07; 8:45 am]

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[8] NASD had asked all surveyed firms whether they could ''identify and relate the funds to specific customers on a transaction by transaction basis.'' The surveyed firms universally stated that tracking fractions of a penny to individual customers would be impossible and any over-collections could not be passed back at the customer level.

[9] *See* NYSE Comment at 1.

[10] *Id.* at 2.

[11] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78o–3(b)(6).

[13] The Commission notes that it has previously issued guidance that any fee collected by broker-dealers from their customers should not be referred to as an ''SEC Fee'' or ''Section 31 Fee.'' *See* Securities Exchange Act Release No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004). If broker-dealers adhere to this guidance, issues related to accumulated funds should not recur.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55878; File No. SR–NASD–2006–074]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Application of NASD Rule 2790 to Issuer-Directed Securities

June 7, 2007.

On June 12, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''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] to amend NASD Rule 2790 as described below. The proposed rule change was published for comment in the **Federal Register** on January 25, 2007.[3] The Commission received one comment on the proposal.[4] On June 4, 2007, the NASD submitted a response to the comment.[5] This order approves the proposed rule change.

I. Description of the Proposal

NASD Rule 2790 provides that a member or a person associated with a member may not sell a new issue to any account in which a restricted person has a beneficial interest, or purchase a new issue in any account in which such member or associated person has a beneficial interest. Currently, Rule 2790(d)(1) provides that these prohibitions do not apply to new issues that are specifically directed by the issuer to restricted persons, provided that issuer-directed securities are not sold to or purchased by an account in which broker-dealer personnel, finders and fiduciaries, or certain members of their immediate family, have a beneficial interest, unless such persons, or members of their immediate family, are employees or directors of the issuer, the issuer's parent, or a subsidiary of the issuer or the issuer's parent. The NASD is proposing to amend Rule 2790(d)(1) to prohibit issuer-directed allocations of new issues to broker-dealers.

The NASD is also proposing to amend Rule 2790(d) by adding a new

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55128 (January 18, 2007), 72 FR 3453.

[4] *See* letter from Morgan, Lewis Bockius LLP to Nancy M. Morris, Secretary, Commission, dated February 15, 2007.

[5] *See* letter from Afshin Atabaki, Assistant General Counsel, NASD, to Nancy M. Morris, Secretary, Commission, dated June 4, 2007 (''Response Letter'').