

**Barbara Z. Sweeney**  
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February 10, 2004

Katherine A. England  
Assistant Director  
Division of Market Regulation  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549-1001

**Re: File No. SR-NASD-2004-025 – Amendments to NASD’s Minor Rule Violation Plan**

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed please find the above-numbered rule filing. Also enclosed is a 3-1/2” disk containing the rule filing in Microsoft Word 7.0 to facilitate production of the Federal Register release.

If you have any questions, please contact Brian J. Woldow, Office of General Counsel, Regulatory Policy and Oversight, NASD, at (202) 728-6927; e-mail [brian.woldow@nasd.com](mailto:brian.woldow@nasd.com). The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Barbara Z. Sweeney  
Senior Vice President  
and Corporate Secretary

Enclosures

File No. SR-NASD-2004-025  
Consists of 22 Pages  
February 10, 2004

**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C.

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Form 19b-4

Proposed Rule Change

by

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

Pursuant to Rule 19b-4 under the  
Securities Exchange Act of 1934

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”), the National Association of Securities Dealers, Inc. (“NASD”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend NASD Interpretative Material 9216 (“IM-9216”) to expand the list of violations eligible for disposition under NASD’s Minor Rule Violation Plan (“MRVP”). Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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**9200. DISCIPLINARY PROCEEDINGS**

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**IM-9216. Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2)**

[—Rule 2210(b) and (c) and Rule 2220(b) and (c)—Failure to have advertisements and sales literature approved by a principal prior to use, failure to maintain separate files of advertisements and sales literature containing required information, and failure to file communications with NASD within the required time limits.]

—Rules 2210, 2211, and 2220, and IM-2210-1, -2210-2, -2210-3, -2210-4, -2210-5, -2210-7, and -2210-8—Communications with the public.

—Rule 3360— Failure to timely file reports of short positions on Form NS-1.

—Rule 3110—Failure to keep and preserve books, accounts, records, memoranda, and correspondence in conformance with applicable laws, rules, regulations and statements of policy promulgated thereunder, and with NASD Rules.

—Rule 8211, Rule 8212, and Rule 8213—Failure to submit trading data as requested.

—Article IV—Failure to timely submit amendments to Form BD.

—Article V—Failure to timely submit amendments to Form U-4.

—Rule 1120—Failure to comply with continuing education requirements (Firm Element).

—Rule 3010(b)—Failure to timely file reports pursuant to the Taping Rule.

—Rule 3070—Failure to timely file reports.

—Rule 4619(d)—Failure to timely file notifications pursuant to SEC Regulation

M.

—Rules 4632, 4632A, 4642, 4652, 5430, 6230[6240], 6420, 6620, 6650, and 6720—Transaction reporting in equity and debt securities.[, convertible debt, and high yield securities.]

—Rule 5262—ITS Trade-Through Rule.

—Rule 5263—Locked and Crossed Markets Rule.

—Rules 6130 and 6170—Transaction reporting to ACT.

—Rules 6954 and 6955—Failure to submit data in accordance with OATS.

—Rule 11870—Failure to abide by customer account transfer contracts.

—Failure to provide or update contact information as required by NASD Rules.

—SEC Rule 11Ac1-4—Failure to properly display limit orders.

—SEC Rule 11Ac1-1(c)(5)—Failure to properly update published quotes in certain ECNs.

—SEC Exchange Act Rule 17a-5—Failure to timely file FOCUS reports and annual audit reports.

—SEC Exchange Act Rule 17a-10—Failure to timely file Schedule I.

—MSRB Rule A-14—Failure to pay annual fee.

—MSRB Rule G-12—Failure to abide by uniform practice rules.

—MSRB Rule G-14—Failure to submit reports.

—MSRB Rule G-36—Failure to timely submit reports.

—MSRB Rule G-37—Failure to timely submit reports for political contributions.

—MSRB Rule G-38—Failure to timely submit reports detailing consultant activities.

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The NASD Regulation, Inc. Board of Directors approved the proposed rule change on November 12, 2003, which authorized the filing of the rule change with the SEC. Counsel for The Nasdaq Stock Market (“NASDAQ”) and NASD Dispute Resolution have been provided an opportunity to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by NASD to its Subsidiaries. The NASD Board of Governors had an opportunity to review the proposed rule change at its meeting on November 13, 2003. No other action by NASD is necessary for the filing of the proposed rule change. Section 1(a)(iii) of Article VII of the NASD

By-Laws permits the NASD Board of Governors to amend NASD interpretative materials without recourse to the membership for approval.

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 30 days following Commission approval.

(b) Questions regarding this rule filing may be directed to Brian J. Woldow, Attorney, Office of General Counsel, Regulatory Policy and Oversight, NASD, at (202) 728-6927.

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

(a) Purpose

**Background**

In 1984, the SEC adopted amendments to Rule 19d-1(c) under the Exchange Act to allow self-regulatory organizations to adopt, with SEC approval, plans for the disposition of minor violations of rules.<sup>1</sup> In 1993, pursuant to SEC Rule 19d-1(c), NASD established an MRVP.<sup>2</sup> See NASD Rule 9216(b). In 2001, the SEC approved significant amendments to NASD's MRVP.<sup>3</sup>

Rule 9216(b) authorizes NASD to impose a fine of \$2,500 or less on any member or associated person of a member for a violation of any of the rules specified in IM-9216. NASD staff reviews the number and seriousness of the violations, as well as the previous disciplinary history of the respondent to determine if a matter is appropriate for disposition

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<sup>1</sup> See Exchange Act Rel. No. 21013 (June 1, 1984), 49 FR 23833 (June 8, 1984).

<sup>2</sup> See Exchange Act Rel. No. 32076 (Mar. 31, 1993), 58 FR 18291 (Apr. 8, 1993); see also Notice to Members 93-42 (July 1993).

<sup>3</sup> See Exchange Act Rel. No. 44512 (July 3, 2001), 68 FR 36812 (July 13, 2001).

under the MRVP and to determine the amount of the fine. Once NASD has brought a minor violation of a rule against an individual or member firm, NASD may, at its discretion, issue progressively higher fines for all subsequent minor violations of rules within the next 24-month period or initiate more formal disciplinary proceedings.

The purpose of the MRVP is to provide for a meaningful sanction for a minor or technical violation of a rule when the initiation of a disciplinary proceeding through the formal complaint process would be more costly and time-consuming than would be warranted. Inclusion of a rule in NASD's MRVP does not mean it is an unimportant rule; rather, a minor or technical violation of the rule may be appropriate for disposition under the MRVP. NASD retains the discretion to bring full disciplinary proceedings.

### **Discussion**

NASD is proposing to amend its MRVP to include the following six additional violations:

1. The ITS Trade-Through Rule

Under Rule 5262, a member registered as an ITS/Computer Assisted Execution System (CAES) Market Maker in an ITS/CAES security must avoid purchasing or selling such security, whether as a principal or agent, at a price that is lower than the bid or higher than the offer displayed from an ITS Participant Exchange or ITS/CAES Market Maker ("trade through") unless one of the rule's specified exceptions applies. NASD proposes to amend the MRVP to include a violation of the ITS trade-through rule.

2. The Locked and Crossed Markets Rule

Markets become locked and crossed when a market participant enters or maintains an "ask" (bid) price for a security that is the same or lower (higher) than the "bid" (ask)

price of another market participant. In other words, when the bid equals the ask, it is a locked market, and when the bid is higher than the ask, it is a crossed market. Under Rule 5263, if a member creates a locked or crossed market in an exchange-listed security and receives a complaint from the party who was locked or crossed, it must satisfy the locked or crossed bid (offer) up to the size of his or her locking or crossing offer (bid), or adjust his or her locking or crossing offer (bid) so as not to cause a locked or crossed market. Rule 5263 also specifies exceptions to the rule. NASD proposes to amend the MRVP to include a violation of the locked and crossed markets rule for non exchange-listed securities.

### 3. TRACE Transaction Reporting Requirements

NASD proposes to eliminate the reference in the MRVP to a violation of the Fixed Income Pricing System (“FIPS”) and replace it with a violation of the Trade Reporting and Compliance Engine (“TRACE”) transaction reporting rule. In adopting the TRACE rules in 2001, NASD eliminated FIPS, which required members to report trades for 50 high-yield debt securities. Since the TRACE system replaced and expanded upon FIPS, NASD proposes to amend the MRVP to include a violation of the TRACE system transaction reporting requirement.

### 4. ADF Transaction Reporting Requirements

NASD proposes to include a violation of the Alternative Display Facility (“ADF”) transaction reporting requirement in the MRVP. The ADF is a quotation collection, trade comparison, and trade reporting facility developed by NASD in accordance with the SEC's SuperMontage Approval Order and in conjunction with NASDAQ's anticipated registration as a national securities exchange. Currently, the MRVP includes transaction



reporting for various systems, including NASDAQ. NASD believes that including a violation of the ADF transaction reporting requirement in the MRVP is consistent with the current minor rule violation for transaction reporting in equity securities. See IM-9216.

#### 5. Communications with the Public

NASD proposes to include violations of the standards applicable to member communications with the public in the MRVP. NASD's advertising rules (Rules 2210, 2211, and 2220, and related Interpretive Materials), contain general and specific standards applicable to all member communications with the public. These standards prohibit incomplete, unbalanced or unfair communications as well as exaggerated, unwarranted, or misleading statements or claims. The rules also enumerate specific standards for certain type of communications, including recommendations, hedge clauses, and projections. In addition, the rules set forth standards for the use and disclosure of the member's name.

Under the current MRVP, NASD may issue Minor Rule Violations only for procedural violations of the advertising rules, such as a failure to have advertisements and sales literature approved by a principal prior to use or a failure to meet specified time limits for filing advertisements. It is NASD's experience, however, that, based on the facts and circumstances, certain content-related violations of these rules can warrant more than a Letter of Caution, yet not rise to a level requiring or meriting full disciplinary action. Accordingly, the proposed rule change would allow NASD to address these minor or technical violations of content-related advertising rules, which might include, for example only, a technical violation of the provisions on the use and disclosure of members' names. NASD therefore proposes to include violations of the standards applicable to member communications with the public in the MRVP.

6. Contact Information

NASD is proposing to expand the MRVP to include, as a general category, a member's failure to identify to NASD and keep current information regarding any contact person that a member must provide to NASD under any current or future NASD rule. For example, a member's failure to provide or update contact information for its executive representative or anti-money laundering ("AML") compliance person would be eligible for disposition as a minor rule violation under this category. In addition, NASD has proposed rules in separate rule filings that would require quarterly updates of certain contact information.<sup>4</sup> NASD proposes that a failure to conduct such a quarterly review or update also would be eligible for disposition under the MRVP through this proposed category.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, 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. NASD believes that the proposed rule changes are consistent with Section 15A(b)(7) in that they work to safeguard adequately the interests of investors while establishing fair and reasonable rules for its members and persons associated with its members. The rule changes also are consistent with Section 15A(b)(8) in that they further the statutory goals of providing a fair procedure for disciplining members and associated

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<sup>4</sup> NASD notes that it has sought to achieve consistency regarding the frequency in which members must review and update this contact information (namely, within 17 business days after the end of each calendar quarter, which is consistent with the schedule for filing the quarterly FOCUS report). NASD has submitted to the SEC rule changes proposing the quarterly update requirement for emergency contact information (SR-NASD-2002-108), executive representative contact information (SR-NASD-2003-184),

persons. NASD believes that the addition of these violations to the MRVP will provide NASD staff with the ability to impose a meaningful sanction for violations of the above rules that warrant more than a Letter of Caution, but do not necessarily rise to a level meriting a full disciplinary proceeding.

4. 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.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

NASD neither solicited nor received written comment.

6. Extension of Time Period for Commission Action

NASD does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

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and continuing education contact person information (SR-NASD-2003-183). NASD also intends to create such a requirement for AML compliance person contact information.

Pursuant to the requirements of the Securities Exchange Act of 1934, NASD has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

NASD, INC.

BY: \_\_\_\_\_  
Barbara Z. Sweeney, Senior Vice President and  
Corporate Secretary

Date: February 10, 2004

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-

; File No. SR-NASD-2004-025)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Proposed Amendments to NASD's Minor Rule Violation Plan

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January \_\_, 2004, 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. 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 filing with the Commission a proposed rule change to amend NASD Interpretative Material 9216 ("IM-9216") (Violations Appropriate for Disposition Under the Plan Pursuant to SEC Rule 19d-1(c)(2)) to expand the list of violations eligible for disposition under NASD's Minor Rule Violation Plan ("MRVP"). Proposed new language is underlined; proposed deletions are in brackets.

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<sup>1</sup> 15 U.S.C. § 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

**9200. DISCIPLINARY PROCEEDINGS**

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**IM-9216. Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2)**

[—Rule 2210(b) and (c) and Rule 2220(b) and (c)—Failure to have advertisements and sales literature approved by a principal prior to use, failure to maintain separate files of advertisements and sales literature containing required information, and failure to file communications with NASD within the required time limits.]

— Rules 2210, 2211, and 2220, and IM-2210-1, -2210-2, -2210-3, -2210-4, -2210-5, -2210-7, and -2210-8—Communications with the public.

—Rule 3360— Failure to timely file reports of short positions on Form NS-1.

—Rule 3110—Failure to keep and preserve books, accounts, records, memoranda, and correspondence in conformance with applicable laws, rules, regulations and statements of policy promulgated thereunder, and with NASD Rules.

—Rule 8211, Rule 8212, and Rule 8213—Failure to submit trading data as requested.

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—Rule 1120—Failure to comply with continuing education requirements (Firm Element).

—Rule 3010(b)—Failure to timely file reports pursuant to the Taping Rule.

—Rule 3070—Failure to timely file reports.

—Rule 4619(d)—Failure to timely file notifications pursuant to SEC Regulation

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—Rules 4632, 4632A, 4642, 4652, 5430, 6230[6240], 6420, 6620, 6650, and 6720—Transaction reporting in equity and debt securities.[, convertible debt, and high yield securities.]

—Rule 5262—ITS Trade-Through Rule.

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—Rules 6130 and 6170—Transaction reporting to ACT.

—Rules 6954 and 6955—Failure to submit data in accordance with OATS.

—Rule 11870—Failure to abide by customer account transfer contracts.

—Failure to provide or update contact information as required by NASD Rules.

—SEC Rule 11Ac1-4—Failure to properly display limit orders.

—SEC Rule 11Ac1-1(c)(5)—Failure to properly update published quotes in certain ECNs.

—SEC Exchange Act Rule 17a-5—Failure to timely file FOCUS reports and annual audit reports.

—SEC Exchange Act Rule 17a-10—Failure to timely file Schedule I.

—MSRB Rule A-14—Failure to pay annual fee.

—MSRB Rule G-12—Failure to abide by uniform practice rules.

—MSRB Rule G-14—Failure to submit reports.

—MSRB Rule G-36—Failure to timely submit reports.

—MSRB Rule G-37—Failure to timely submit reports for political contributions.

—MSRB Rule G-38—Failure to timely submit reports detailing consultant activities.

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

(a) Purpose

**Background**

In 1984, the SEC adopted amendments to Rule 19d-1(c) under the Exchange Act to allow self-regulatory organizations to adopt, with SEC approval, plans for the disposition of minor violations of rules.<sup>3</sup> In 1993, pursuant to SEC Rule 19d-1(c), NASD established an MRVP.<sup>4</sup> See NASD Rule 9216(b). In 2001, the SEC approved significant amendments to NASD's MRVP.<sup>5</sup>

Rule 9216(b) authorizes NASD to impose a fine of \$2,500 or less on any member or associated person of a member for a violation of any of the rules specified in IM-9216. NASD staff reviews the number and seriousness of the violations, as well as the previous

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<sup>3</sup> See Exchange Act Rel. No. 21013 (June 1, 1984), 49 FR 23833 (June 8, 1984).

<sup>4</sup> See Exchange Act Rel. No. 32076 (Mar. 31, 1993), 58 FR 18291 (Apr. 8, 1993); see also Notice to Members 93-42 (July 1993).



disciplinary history of the respondent to determine if a matter is appropriate for disposition under the MRVP and to determine the amount of the fine. Once NASD has brought a minor violation of a rule against an individual or member firm, NASD may, at its discretion, issue progressively higher fines for all subsequent minor violations of rules within the next 24-month period or initiate more formal disciplinary proceedings.

The purpose of the MRVP is to provide for a meaningful sanction for the minor or technical violation of a rule when the initiation of a disciplinary proceeding through the formal complaint process would be more costly and time-consuming than would be warranted. Inclusion of a rule in NASD's MRVP does not mean it is an unimportant rule; rather, a minor or technical violation of the rule may be appropriate for disposition under the MRVP. NASD retains the discretion to bring full disciplinary proceedings.

### **Discussion**

NASD is proposing to amend its MRVP to include the following six additional violations:

1. The ITS Trade-Through Rule

Under Rule 5262, a member registered as an ITS/Computer Assisted Execution System (CAES) Market Maker in an ITS/CAES security must avoid purchasing or selling such security, whether as a principal or agent, at a price that is lower than the bid or higher than the offer displayed from an ITS Participant Exchange or ITS/CAES Market Maker ("trade through") unless one of the rule's specified exceptions applies. NASD proposes to amend the MRVP to include a violation of the ITS trade-through rule.

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<sup>5</sup> See Exchange Act Rel. No. 44512 (July 3, 2001), 68 FR 36812 (July 13, 2001).

2. The Locked and Crossed Markets Rule

Markets become locked and crossed when a market participant enters or maintains an “ask” (bid) price for a security that is the same or lower (higher) than the “bid” (ask) price of another market participant. In other words, when the bid equals the ask, it is a locked market, and when the bid is higher than the ask, it is a crossed market. Under Rule 5263, if a member creates a locked or crossed market in an exchange-listed security and receives a complaint from the party who was locked or crossed, it must satisfy the locked or crossed bid (offer) up to the size of his or her locking or crossing offer (bid), or adjust his or her locking or crossing offer (bid) so as not to cause a locked or crossed market. Rule 5263 also specifies exceptions to the rule. NASD proposes to amend the MRVP to include a violation of the locked and crossed markets rule for non exchange-listed securities.

3. TRACE Transaction Reporting Requirements

NASD proposes to eliminate the reference in the MRVP to a violation of the Fixed Income Pricing System (“FIPS”) and replace it with a violation of the Trade Reporting and Compliance Engine (“TRACE”) transaction reporting rule. In adopting the TRACE rules in 2001, NASD eliminated FIPS, which required members to report trades for 50 high-yield debt securities. Since the TRACE system replaced and expanded upon FIPS, NASD proposed to amend the MRVP to include a violation of the TRACE system transaction reporting requirement.

4. ADF Transaction Reporting Requirements

NASD proposes to include a violation of the Alternative Display Facility (“ADF”) transaction reporting requirement in the MRVP. The ADF is a quotation collection, trade

comparison, and trade reporting facility developed by NASD in accordance with the SEC's SuperMontage Approval Order and in conjunction with NASDAQ's anticipated registration as a national securities exchange. Currently, the MRVP includes transaction reporting for various systems, including NASDAQ. NASD believes that including a violation of the ADF transaction reporting requirement in the MRVP is consistent with the current minor rule violation for transaction reporting in equity securities. See IM-9216.

#### 5. Communications with the Public

NASD proposes to include violations of the standards applicable to member communications with the public in the MRVP. NASD's advertising rules (Rules 2210, 2211, and 2220, and related Interpretive Materials), contain general and specific standards applicable to all member communications with the public. These standards prohibit incomplete, unbalanced or unfair communications as well as exaggerated, unwarranted, or misleading statements or claims. The rules also enumerate specific standards for certain type of communications, including recommendations, hedge clauses, and projections. In addition, the rules set forth standards for the use and disclosure of the member's name.

Under the current MRVP, NASD may issue Minor Rule Violations only for procedural violations of the advertising rules, such as a failure to have advertisements and sales literature approved by a principal prior to use or a failure to meet specified time limits for filing advertisements. It is NASD's experience, however, that, based on the facts and circumstances, certain content-related violations of these rules can warrant more than a Letter of Caution, yet not rise to a level requiring or meriting full disciplinary action. Accordingly, the proposed rule change would allow NASD to address these minor or technical violations of content-related advertising rules, which might include, for

example only, a technical violation of the provisions on the use and disclosure of members' names. NASD therefore proposes to include violations of the standards applicable to member communications with the public in the MRVP.

#### 6. Contact Information

NASD is proposing to expand the MRVP to include, as a general category, a member's failure to identify to NASD and keep current information regarding any contact person that a member must provide to NASD under any current or future NASD rule. For example, a member's failure to provide or update contact information for its executive representative or anti-money laundering ("AML") compliance person would be eligible for disposition as a minor rule violation under this category. In addition, NASD has proposed rules in separate rule filings that would require quarterly updates of certain contact information.<sup>6</sup> NASD proposes that a failure to conduct such a quarterly review or update also would be eligible for disposition under the MRVP through this proposed category.

##### (b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, 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

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<sup>6</sup> NASD notes that it has sought to achieve consistency regarding the frequency in which members must review and update this contact information (namely, within 17 business days after the end of each calendar quarter, which is consistent with the schedule for filing the quarterly FOCUS report). NASD has submitted to the SEC rule changes proposing the quarterly update requirement for emergency contact information (SR-NASD-2002-108), executive representative contact information (SR-NASD-2003-184), and continuing education contact person information (SR-NASD-2003-183). NASD also intends to create such a requirement for AML compliance person contact information.

interest. NASD believes that the proposed rule changes are consistent with Section 15A(b)(7) in that they work to safeguard adequately the interests of investors while establishing fair and reasonable rules for its members and persons associated with its members. The rule changes also are consistent with Section 15A(b)(8) in that they further the statutory goals of providing a fair procedure for disciplining members and associated persons. NASD believes that the addition of these violations to the MRVP will provide NASD staff with the ability to impose a meaningful sanction for violations of the above rules that warrant more than a Letter of Caution, but do not necessarily rise to a level meriting a full disciplinary proceeding.

(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

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 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, N.W., Washington, D.C. 20549. Comments also may be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-NASD-2004-025. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods.

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 NASD. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland  
Deputy Secretary