

July 6, 1998

VIA MESSENGER

Katherine A. England
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549
Mail Stop 10-1

Re: **File No. SR-NASD-98-45; Supervision of Correspondence**

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed herewith is the above-numbered rule filing. Also enclosed is a 3-1/2" disk containing the rule filing in WordPerfect 5.1 to facilitate production of the Federal Register release.

If you have any questions, please contact Mary Revell, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8203; e-mail revellm@nasd.com. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Joan Conley
Corporate Secretary

Attachment

File No. SR-NASD-98-45
Consists of 13 Pages

SECURITIES AND EXCHANGE COMMISSION

Washington, D. C.

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) under the Securities Exchange Act of 1934 ("Act"), NASD Regulation, Inc. ("NASD Regulation") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to National Association of Securities Dealers, Inc. ("NASD" or "Association") Rules 3010 and 3110 to further delay the effective date of one of the provisions in recently-approved amendments to these rules. The amended rules allow firms to develop flexible procedures for the review of correspondence with the public.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The NASD Regulation Board of Directors approved a proposed rule change to amend NASD Rules 3010 and 3110 and authorized the filing of the rule change with the SEC at its meeting on March 14, 1997. The Nasdaq Stock Market was provided with an opportunity to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by the NASD to its Subsidiaries. The NASD Board of Governors had an opportunity to review the proposed rule change at its meeting on April 10, 1997. No other action by the NASD is necessary for the filing of the proposed rule change. Section 1(a)(2) of Article VII of the NASD By-Laws permits the NASD Board of Governors to adopt amendments to the NASD Conduct Rules without recourse to the membership for approval.

The original Rule Filing specified an effective date of 45 days after SEC approval of the proposed rule change. However, subsequent to approval of the proposed rule change, several member firms submitted comment letters raising concerns regarding issues raised by SEC approval of an amendment to the proposed rule change. As a result, NASD Regulation postponed the effective date of the amended rules to address member concerns. Subsequently, NASD Regulation implemented all provisions in the amended rules with the exception of the provision stating that members must review all incoming, non-electronic correspondence. NASD Regulation delayed the effective date of this provision until July 7, 1998. Further extending the effective date of this provision is consistent with prior authorizations.

(b) Questions regarding this rule filing may be directed to Mary Revell, Associate General Counsel, NASD Regulation, Office of General Counsel, at (202) 728-8203.

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

(a) **Purpose**

A proposed rule change to amend NASD Rules 3010 and 3110 was filed with the SEC on April 11, 1997 in File No. SR-NASD-97-24. The purpose of the amendments was to allow firms to develop flexible procedures for the review of correspondence with the public. In that filing, the NASD stated that it would make the proposed rule change effective within 45 days of Commission approval. Amendment No. 1, containing a draft Notice to Members (“Notice”) to be issued following approval of the proposed rule

change, was filed with the SEC on December 1, 1997. The Notice to Members described the new rules and provided guidance to NASD members on the implementation of the new rules. The SEC approved the proposed rule change and Amendment No. 1 to the proposed rule change on December 31, 1997.¹ Notice to Members 98-11 announced approval of the proposed rule change and stated that the amendments to Rules 3010 and 3110 would be effective on February 15, 1998.

Subsequent to approval of the proposed rule change by the SEC, a number of commenters filed letters with the SEC raising issues regarding Amendment No. 1 to the proposed rule change and its accompanying Notice to Members.² NASD Regulation, believing that the letters raise important issues that should be fully addressed before the effectiveness of the rule change, filed proposed rule change SR-NASD-98-10 to postpone the effective date of the amendments to Rules 3010 and 3110 approved in Release No. 39510.³

¹ See Securities Exchange Act Release No. 39510 (December 31, 1997), 63 FR 1131 (January 8, 1998) ("Release No. 39510").

² See letters from Carl B. Wilkerson, American Council of Life Insurance, to Jonathan G. Katz, Secretary, SEC, dated January 9, 1998 and January 29, 1998; Beverly A. Byre, BenefitsCorp Equities, Inc., to Jonathan G. Katz, Secretary, SEC, dated January 26, 1998; Michael S. Martin, The Equitable Life Assurance Society of the United States, to Jonathan G. Katz, SEC, dated January 29, 1998; Janet G. McCallen, International Association for Financial Planning, to Jonathan G. Katz, Secretary, SEC, dated February 13, 1998; W. Thomas Boulter, Jefferson Pilot Financial, to Jonathan G. Katz, Secretary, SEC, dated January 28, 1998; Leonard M. Bakal, Metropolitan Life Insurance Company and MetLife Securities, Inc., to Jonathan G. Katz, Secretary, SEC, dated January 28, 1998; Michael L. Kerley, MML Investors Services, Inc. to Secretary, SEC, dated January 26, 1998; Mark D. Johnson, The National Association of Life Underwriters, to Jonathan G. Katz, Secretary, SEC, dated February 5, 1998; Theodore Mathas, NYLIFE Securities, to Jonathan G. Katz, Secretary, SEC, dated January 16, 1998 and January 29, 1998; Beverly A. Byrne, One Orchard Equities, Inc., to Jonathan G. Katz, Secretary, SEC, dated January 26, 1998; Dodie Kent, Pruco Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated January 29, 1998; and James T. Bruce, Wiley, Rein & Fielding, on behalf of the Electronic Messaging Association, to Jonathan G. Katz, SEC, dated January 30, 1998.

³ The proposed rule change became effective on filing. See Release No. 34-39665 (February 13, 1998),

The concerns raised by the commenters include issues concerning the effect of the rules on the review of incoming correspondence and the scope of the obligation of member firms to control the use of electronic communications systems that registered persons use to communicate with their customers. After considering these issues, NASD Regulation filed proposed rule change SR-NASD-98-31, implementing the amendments to Rules 3010 and 3110 approved in Release No. 39510 immediately, including the requirements set forth in Notice to Members 98-11, with the exception of the provision in the Notice stating that members must review “all incoming correspondence received in non-electronic format directed to registered representatives and related to a member’s investment banking or securities business.”⁴ The effective date of this provision was delayed until July 7, 1998 in order to allow NASD Regulation a further opportunity to consider comments on this issue.

NASD Regulation proposes a further delay in the effective date of the provision in the Notice addressing the review of incoming, non-electronic correspondence until **September 30, 1998**. At its meeting on June 25, 1998, the NASD Regulation Board of Directors approved revisions to Rule 3010 and to the Notice to Members that are intended to address the regulatory concerns necessitating the review of incoming, non-electronic correspondence and at the same time to respond to concerns raised by member firms about the difficulty of conducting such review. The Board also approved

63 FR 9032 (February 23, 1998).

⁴ The proposed rule change became effective on filing. See Release No. 34-39866 (April 14, 1998), 63 FR 19778 (April 21, 1998).

submission of a rule filing to the SEC. NASD Regulation anticipates that the rule filing will be submitted to the SEC prior to July 30, 1998. When that proposed rule change is filed, NASD Regulation will request an indefinite extension of this provision until the SEC has acted on the rule filing. In the meantime, to ensure continuity of the requirements applicable to member firms, NASD Regulation proposes a delay in the effective date of the provision. Prior to the September 30, 1998 effective date, however, members will be required to review and report customer complaints as required by Rule 3070(a)(2); keep and preserve all written customer complaints as required by Rule 3110(d); and establish procedures for the review of incoming and outgoing written and electronic correspondence consistent with new Rules 3010(d)(1) and (2).

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

NASD Regulation 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

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

Not applicable.

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

The rule change is effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act and Section (e) of Rule 19b-4 promulgated thereunder in that it constitutes a stated policy, practice, or interpretation with respect to the meaning of an existing rule.

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

NASD REGULATION, INC.

BY: _____

Joan Conley
Corporate Secretary

Date: July 6, 1998

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-98-45)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Supervision of Correspondence

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on , NASD Regulation, Inc. ("NASD Regulation") 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 Regulation. NASD Regulation has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning of an existing rule under § 19(b)(3)(A)(i) of the Act, which renders the rule effective upon the Commission's receipt of this filing. 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 Regulation is proposing to amend National Association of Securities Dealers, Inc. ("NASD" or "Association") Rules 3010 and 3110 to further delay the effective date of one of the provisions in recently-approved amendments to these rules.

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 Regulation 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 Regulation 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**

A proposed rule change to amend NASD Rules 3010 and 3110 was filed with the SEC on April 11, 1997 in File No. SR-NASD-97-24. The purpose of the amendments was to allow firms to develop flexible procedures for the review of correspondence with the public. In that filing, the NASD stated that it would make the proposed rule change effective within 45 days of Commission approval. Amendment No. 1, containing a draft Notice to Members ("Notice") to be issued following approval of the proposed rule change, was filed with the SEC on December 1, 1997. The Notice to Members described the new rules and provided guidance to NASD members on the implementation of the new rules. The SEC approved the proposed rule change and Amendment No. 1 to the proposed rule change on December 31, 1997.¹ Notice to Members 98-11 announced approval of the proposed rule change and stated that the amendments to Rules 3010 and 3110 would be effective on February 15, 1998.

Subsequent to approval of the proposed rule change by the SEC, a number of commenters filed letters with the SEC raising issues regarding Amendment No. 1 to the

¹ See Securities Exchange Act Release No. 39510 (December 31, 1997), 63 FR 1131 (January 8, 1998) ("Release No. 39510").

proposed rule change and its accompanying Notice to Members.² NASD Regulation, believing that the letters raise important issues that should be fully addressed before the effectiveness of the rule change, filed proposed rule change SR-NASD-98-10 to postpone the effective date of the amendments to Rules 3010 and 3110 approved in Release No. 39510.³

The concerns raised by the commenters include issues concerning the effect of the rules on the review of incoming correspondence and the scope of the obligation of member firms to control the use of electronic communications systems that registered persons use to communicate with their customers. After considering these issues, NASD Regulation filed proposed rule change SR-NASD-98-31, implementing the amendments to Rules 3010 and 3110 approved in Release No. 39510 immediately, including the requirements set forth in Notice to Members 98-11, with the exception of the provision in the Notice stating that members must review “all incoming correspondence received in non-electronic format directed to registered representatives and related to a member’s

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³ The proposed rule change became effective on filing. See Release No. 34-39665 (February 13, 1998), 63 FR 9032 (February 23, 1998).

investment banking or securities business.”⁴ The effective date of this provision was delayed until July 7, 1998 in order to allow NASD Regulation a further opportunity to consider comments on this issue.

NASD Regulation proposes a further delay in the effective date of the provision in the Notice addressing the review of incoming, non-electronic correspondence until **September 30, 1998**. At its meeting on June 25, 1998, the NASD Regulation Board of Directors approved revisions to Rule 3010 and to the Notice to Members that are intended to address the regulatory concerns necessitating the review of incoming, non-electronic correspondence and at the same time to respond to concerns raised by member firms about the difficulty of conducting such review. The Board also approved submission of a rule filing to the SEC. NASD Regulation anticipates that the rule filing will be submitted to the SEC prior to July 30, 1998. When that proposed rule change is filed, NASD Regulation will request an indefinite extension of this provision until the SEC has acted on the rule filing. In the meantime, to ensure continuity of the requirements applicable to member firms, NASD Regulation proposes a delay in the effective date of the provision. Prior to the September 30, 1998 effective date, however, members will be required to review and report customer complaints as required by Rule 3070(a)(2); keep and preserve all written customer complaints as required by Rule 3110(d); and establish procedures for the review of incoming and outgoing written and electronic correspondence consistent with new Rules 3010(d)(1) and (2).

⁴ The proposed rule change became effective on filing. See Release No. 34-39866 (April 14, 1998), 63 FR 19778 (April 21, 1998).

(b) Statutory Basis

NASD Regulation 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 the Association'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 NASD believes that delaying the effective date of one of the provisions in the new rules is consistent with these requirements.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation 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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act and subparagraph (e) of Rule 19b-4 thereunder in that it constitutes a stated policy, practice, or interpretation with respect to the meaning of an existing rule.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the 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. 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. 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 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).

Jonathan G. Katz
Secretary