

non-natural controlling persons within the scope of its coverage.

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.⁷ Specifically, the Commission finds that the proposal is consistent with section 15A(b)(6) of the Act,⁸ which requires, among other things, that NASD'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. The Commission believes that the amendments should improve NASD's ability to ensure that its membership is not likely to engage in conduct that may be harmful to public investors.

The Commission believes that NASD's proposed changes to Rule 1017 are proper. First, the adoption of a defined quantitative measure of the amount of assets transferred that will require an application for approval should provide a greater degree of clarity to NASD members such that they may more readily anticipate when it will be necessary to file an application. The Commission also notes that the changes to Rule 1017 should result in its application to a broader range of transactions, in that applications for approval will now be required for any form of asset transfer, and not only acquisitions, and will be required except where both parties are members of the NYSE. This should enhance the NASD's ability to ensure that such transactions do not result in a member or its owners insulating itself or themselves from the responsibility to pay existing or potential customer claims.

The Commission believes that NASD's codification of a rebuttable presumption to deny an application for membership or continued membership where the applicant's history reflects any of the negative events specified in Rule 1014(a)(3)(A) and (C) through (E) is also proper. The Commission notes that this presumption should provide additional guidance to applicants as to how such events will be assessed in considering an applicant's ability to comply with NASD's membership standards. Moreover, the change should serve to provide notice to potential applicants of the consequences of

misconduct, and thereby discourage it. The Commission also notes that the presumption may be overcome if the applicant can demonstrate that it is otherwise capable of meeting NASD's membership standards. The Commission believes that, because NASD is a member organization charged with the protection of investors and the public interest, it is fair to require applicants to show why membership should be granted, notwithstanding any prior history of misconduct.

As a further measure to encourage compliance with arbitration or other awards, and to deny entry to those who disregard them, NASD has proposed to amend Rule 1014(a)(3) to add pending arbitrations or civil actions to the list of factors considered in deciding whether to grant membership or continued membership. Further, NASD would add the existence of unpaid arbitration awards or settlements, or other adjudicated customer awards, to the factors listed in Rule 1014(a)(3) that would trigger the presumption against granting approval of membership or continued membership. NASD would consider this factor not only in reviewing the member's application, but also in reviewing its control persons and other persons who, by virtue of other arrangements or capital structure, exercise control over the applicant. The Commission believes that these changes are appropriate because such matters may demonstrate an applicant's ability or willingness to comply with the Act, the regulations of the Commission and the rules of NASD. Moreover, the new provisions should provide incentive to NASD members, potential NASD members, and persons that control NASD members to comply with arbitration or other awards.

Finally, the Commission believes that NASD's expansion of the definition of "Associated Person," for purposes of its membership rules, to include non-natural persons is proper. The Commission believes the inclusion of such persons should permit NASD to examine a broader range of entities that potentially control an applicant, and thereby ensure that its ability to assess the applicant and the applicant's business history are not unnecessarily restricted.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change (File No. SR-NASD-2003-07) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03-32179 Filed 12-30-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48986; File No. SR-NASD-2003-183]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Proposed Amendments to Rule 1120 Regarding Regulatory Element Contact Person

December 23, 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 December 9, 2003, 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 by the 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

The NASD is proposing to amend Rule 1120 to require that each member designate and identify to NASD the individual(s) who will receive Web Central Registration Depository ("CRD") continuing education ("CE") Regulatory Element e-mails. The proposed rule change further would require that each member quarterly review and update the CE contact person(s) information. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

1120. Continuing Education Requirements

This Rule prescribes requirements regarding the continuing education of certain registered persons subsequent to their initial qualification and registration with NASD [the Association]. The requirements shall

⁷ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78o-3(b)(6).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

consist of a Regulatory Element and a Firm Element as set forth below.

(a) Regulatory Element

(1) through (6) No change.

(7) *Regulatory Element Contact*

Person

Each member shall designate and identify to NASD (by name and e-mail address) an individual or individuals responsible for receiving e-mail notifications provided via the Central Registration Depository regarding when a registered person is approaching the end of his or her Regulatory Element time frame and when a registered person is deemed inactive due to failure to complete the requirements of the Regulatory Element program, and provide prompt notification to NASD regarding any change in such designation(s). Each member must review and, if necessary, update the information regarding its Regulatory Element contact person(s) within 17 business days after the end of each calendar quarter to ensure the information's accuracy.

(b) No change.³

* * * * *

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

In its filing with the Commission, the 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. The 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

NASD Rule 1120 sets forth the CE requirements for registered persons. One of the two CE components is the Regulatory Element, a computer-based education program administered by the NASD to help ensure that registered persons are kept up-to-date on regulatory, compliance, and sales practice matters in the industry. Each registered person is required to

³ Subparagraph (c) was renumbered to subparagraph (b) to accurately reflect the current text of NASD Rule 1120. Pursuant to a telephone conversation between Grace Yeh, Counsel, NASD, and A. Michael Pierson, Law Clerk, Division of Market Regulation ("Division"), Commission, dated, December 22, 2003.

complete the Regulatory Element initially within 120 days after the person's second registration anniversary date and, thereafter, within 120 days after every third registration anniversary date. A registered person who becomes inactive for failing to complete the required Regulatory Element program ("CE inactive") is prohibited from performing, or being compensated for, any activities requiring registration, including supervision. Members are required under NASD Rule 1120 to restrict CE inactive persons from performing the prohibited activities.

To help firms keep track of their registered persons' Regulatory Element status, NASD provides members with e-mail notifications through Web CRD when a person is both 90 days and 30 days away from the end of his or her period to complete the Regulatory Element program before going inactive. CRD also notifies members when a registered person at the firm becomes CE inactive. Currently, receipt of the e-mail notifications is optional, and some firms have elected not to receive the notifications. The proposed rule change would require each member to designate a contact person or persons to receive such CRD Regulatory Element e-mail notifications. The member would be required to provide to the NASD the name and e-mail address of the designated contact person(s) and to promptly notify the NASD of any changes to the information. The NASD intends to collect the contact information through the NASD Contact System⁴ on the NASD Web site.

To ensure the accuracy of the CE contact information, the proposed rule change also would require that each member review and, if necessary, update its CE contact person information within 17 business days after the end of each calendar quarter.⁵

⁴ Effective as of December 8, 2003, the NASD Contact System replaced the Member Firm Contact Questionnaire, the previous system used for members to update and maintain certain required contact information.

⁵ This proposed schedule is consistent with a member's quarterly FOCUS reporting schedule, as well as with the proposed rule change regarding members' business continuity plans. See Securities Exchange Act Release No. 46444 (August 30, 2002), 67 FR 57257 (September 9, 2002) (File No. SR-NASD-2002-108); Securities Exchange Act Release No. 47441 (March 4, 2003), 68 FR 11432 (March 10, 2003) (Notice of Filing of Amendment Nos. 1, 2, and 3 of File No. SR-NASD-2002-108); Securities Exchange Act Release No. 48503 (September 17, 2003), 68 FR 55686 (September 26, 2003) (Notice of Filing of Amendment Nos. 4 and 5 of File No. SR-NASD-2002-108). The Commission notes that these filings are pending at the Commission, and would require members to review and update emergency contact information within 17 business days after the end of each calendar quarter. Similarly, the proposed schedule is consistent with a proposed

The NASD is examining different methods of reminding members of the obligation to quarterly review and update contact person information, including the possibility of a Web page linked to the act of filing the FOCUS report that would prompt members to update such contact person and/or through e-mail reminders to the designated CE contact person.⁶

The NASD believes that the proposed rule change will help firms avoid an NASD Rule 1120(a) violation that would occur if an inactive person were permitted to perform, or receive compensation for, activities that required registration during the period of inactive status. Specifically, the notifications will ensure that firms are positioned to prevent any registered persons from becoming inactive, thus enabling firms and individuals to avoid violations that occur when persons prohibited from doing business due to a CE inactive status nonetheless conduct business or improperly receive compensation.

The NASD also believes the proposed rule change is designed to assist the NASD with its efforts to further automate various aspects of its examination program with a goal of removing a substantial portion of CE compliance inspections from on-site firm examinations. The NASD believes that a more automated approach will result in a more efficient use of the NASD Department of Member Regulation resources and lead to a less intrusive regulatory approach for firms.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,⁷ 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. The NASD believes that the proposed rule change is designed to accomplish these ends by helping firms ensure that their registered persons complete the required Regulatory Element training and are prevented from conducting business if they become CE inactive.

rule change filed with the Commission regarding the review and update of a member's Executive Representative designation and contact information. See SR-NASD-2003-184.

⁶ Similarly, NASD would prompt members to review and update, where necessary, their emergency contact and Executive Representative information. See *supra* note 4.

⁷ 15 U.S.C. 78o-3(b)(6).

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

The 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.

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, 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, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NASD-2003-183. 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, 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 the NASD. All submissions should refer to File No. SR-NASD-2003-183 and should be submitted by January 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03-32180 Filed 12-30-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48989; File No. SR-NASD-00-04]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments Nos. 6, 7, 8, 9, and 10 by the National Association of Securities Dealers, Inc. Relating to Its Corporate Financing Rule

December 23, 2003.

I. Introduction

On January 21, 2000, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission" or "SEC"), 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 amending NASD Conduct Rule 2710. NASD filed Amendments Nos. 1,³ 2,⁴ and 3⁵ to the proposed rule change on March 6, 2000, March 21, 2000, and March 30, 2000, respectively. The proposed rule change was published for comment in the **Federal Register** on April 11, 2000.⁶ The Commission received 14 comments.⁷ NASD filed Amendment

No. 4 on December 11, 2000.⁸ NASD filed Amendment No. 5 on February 4, 2001,⁹ which was published for comment in the **Federal Register** on March 14, 2001.¹⁰ The Commission received eight comments.¹¹ NASD filed Amendment Nos. 6,¹² 7,¹³ 8,¹⁴ 9,¹⁵ and 10¹⁶ on November 19, 2001, and April

⁸ Amendment No. 4, filed December 11, 2000, amends the original filing as modified by Amendment Nos. 1, 2, and 3 in response to comments.

⁹ NASD submitted a new Form 19b-4, which replaced and superseded all previous versions of the proposed rule change in their entirety.

¹⁰ See Securities Exchange Act Release No. 44044 (March 6, 2001), 66 FR 14949.

¹¹ These comments, and the amendments proposed by NASD Regulation in response, are summarized in Section III. of this order.

¹² NASD submitted a new Form 19b-4, which replaced and superseded all previous versions of the proposed rule change in their entirety.

¹³ Letter from Gary L. Goldsholle, Associate General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated April 3, 2002 ("Amendment No. 7"). Amendment No. 7 makes certain technical corrections to the rule text as it appears in Amendment No. 6, such as correcting the numbering of certain paragraphs in the rule text. As such, it is not subject to notice and comment.

¹⁴ Letter from Gary L. Goldsholle, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated April 11, 2003 ("Amendment No. 8"). Among other things, Amendment No. 8: (i) Amends the definition of "item of value" in proposed Rule 2710(c)(3)(B) to exclude derivative instruments and certain other transactions; (ii) amends proposed NASD Rule 2710(a) to define "fair price;" (iii) modifies the requirement in proposed NASD Rule 2710(b)(6)(A)(iv) such that information initially filed in connection with debt securities and derivative instruments acquired or entered into for a "fair price" may be limited to a brief description of the transaction and a representation that the transaction was, or, if the pricing terms have not been set will, be entered into for a "fair price;" (iv) amends the lock-up requirements in proposed Rule 2710(g)(2) to exempt certain debt securities and derivative instruments; and (v) changes references in the rules from "the Association" to "NASD."

¹⁵ Letter from Therese Woods, Deputy Director, Corporate Financing, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated April 25, 2003 ("Amendment No. 9"). Amendment No. 9 makes technical corrections to the proposed rule text and amends proposed Rule 2710(b)(6)(A)(iv)(b) to state: "information initially filed in connection with debt securities and derivative instruments acquired or entered into for "fair price" as defined in subsection (a)(9), but not excluded from items of value under subsection (c)(3)(B)(vi) or (vii), may be limited to a brief description of the transaction (additional information may be required in the review process) and a representation by the member that a registered principal or senior manager on behalf of the member has determined that the transaction was (or if the pricing terms have not been set) will be entered into at a fair price as defined in subsection (a)(9);".

¹⁶ Letter from Therese Woods, Deputy Director, Corporate Financing, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated May 28, 2003 ("Amendment No. 10"). First, Amendment No. 10 makes technical corrections to the proposed rule text and revises the definition of "fair price" in proposed Rule 2710(a)(9) to include a cross reference to subsection (e)(5) and to clarify

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Letter from Suzanne E. Rothwell, Chief Counsel, Corporate Financing, NASD Regulation, Inc. ("NASD Regulation"), to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 3, 2000 ("Amendment No. 1").

⁴ Letter from Suzanne E. Rothwell, Chief Counsel, Corporate Financing, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated March 20, 2000 ("Amendment No. 2").

⁵ Letter from Suzanne E. Rothwell, Chief Counsel, Corporate Financing, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated March 29, 2000 ("Amendment No. 3").

⁶ See Securities Exchange Act Release No. 42619 (April 4, 2000), 65 FR 19409 ("initial notice").

⁷ These comments, and NASD Regulation's response, are discussed in the release cited in footnote 9.