

December 1, 2003

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-2003-177 – Technical Amendments to Interpretative Material
3130 (IM-3130)**

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 Shirley H. Weiss, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8844; e-mail shirley.weiss@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

cc: Ann Leddy

File No. SR-NASD-2003-177
Consists of 13 Pages
December 1, 2003

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) 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 Interpretive Material 3130 ("IM-3130") to change references to "paragraphs (b)(2) and (c)(2)" of Rules 3030 and 3031 to "paragraphs (c)(2) and (d)(2)" in IM-3130(a), (c), (d), and (e); and change references to "the Association" to "NASD" in IM-3130, thereby conforming the rule language in IM-3130 to the rule language in Rules 3130 and 3131, as recently amended. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

IM-3130. Restrictions on a Member's Activity

(a) This explanation outlines and discusses some of the financial and operational deficiencies which could initiate action under Rule 3130. Paragraphs [(b)](c)(2) and [(c)](d)(2) of Rules 3130 and 3131 recognize that there are various unstated financial and operational reasons for which [the Association] NASD may impose restrictions on a member so as to prohibit its expansion or to require a reduction in overall level of business. These provisions are deemed necessary in order to provide for the variety of situations and practices which do arise and which, if allowed to persist, could result in increased exposure to customers and to broker/dealers.

(b) In the opinion of the Board of Governors, it would be impractical and unwise to attempt to identify and list all of the situations and practices [which] that might lead to the imposition of restrictions or the types of remedial actions [the Association] NASD may direct be taken because they are numerous and cannot be totally identified or specified with any degree of

precision. The Board believes, however, that it would be helpful to members' understanding to list some of the other bases upon which [the Association] NASD may conclude that a member is in or approaching financial difficulty.

(c) For purposes of paragraphs [(b)](c)(2) and [(c)](d)(2) of Rule 3130, a member may be considered to be in or approaching financial or operational difficulty in conducting its operations and therefore subject to restrictions if it is determined by [the Association] NASD that any of the parameters specified therein are exceeded or one or more of the following conditions exist:

(1) through (8) No change

(d) For purposes of paragraphs [(b)](c)(2) and [(c)](d)(2) of Rule 3131, a member may be considered to be in or approaching financial or operational difficulty in conducting its operations and therefore subject to restrictions if it is determined by [the Association] NASD that any of the parameters specified therein are exceeded or one or more of the following conditions exist:

(1) No change

(2) The member has experienced a substantial change in the manner in which it processes its business which, in [the] NASD's view, [of the Association,] increases the potential risk of loss to customers and members.

(3) through (8) No change

(e) If [the Association] NASD determines that any of the conditions specified in paragraphs (c) or (d) of this explanation exist, it may require that the member take appropriate action by effecting one or more of the following actions until such time as [the Association] NASD determines they are no longer required:

(1) through (12) No change

(13) Be subject to such other restrictions or take such other action as [the Association] NASD deems appropriate under the circumstances in the public interest and for the protection of members.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by the Board of Directors of NASD Regulation, Inc. at its meeting on January 22, 2003, which authorized the filing of the rule change with the SEC. Counsel for The Nasdaq Stock Market, Inc. and NASD Dispute Resolution, Inc. 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 January 23, 2003. No other action by NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of the NASD By-Laws permits the NASD Board of Governors to amend NASD Rules without recourse to the membership for approval.

(b) Questions regarding this rule filing may be directed to Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8844.

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

(a) Purpose

The proposed rule change would: change references to "paragraphs (b)(2) and (c)(2)" of Rules 3030 and 3031 to "paragraphs (c)(2) and (d)(2)" in IM-3130(a), (c), (d), and (e); and change references to "the Association" to "NASD" in IM-3130, thereby conforming the rule language in IM-3130 to the rule language in Rules 3130 and 3131, as recently amended.¹

(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 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 conforming references IM-3130 to renumbered paragraphs in recently amended Rules 3130 and 3131 and changing references to "the Association" to "NASD" is consistent with the protection of investors and the public interest.

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.

¹ Release No. 34-48438 (File No. SR-NASD-2003-74 (Sept. 4, 2003), 68 Federal Register 53766 (Sept. 12, 2003).

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 proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(6) of Rule 19b-4 thereunder, in that the proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) after the date of this filing. In accordance with Rule 19b-4(f)(6)(iii), NASD submitted written notice of its intent to file the proposed rule change (which included a brief description of the proposed rule change), along with the draft text of the proposed rule change, at least five business days prior to the date of filing. The proposed rule change would amend IM-3130 to conform references in that rule to recently amended Rules 3130 and 3131. In addition, NASD requests that the Commission waive the 30-day operative delay set forth in Rule 19b-4(f)(6)(iii) so that these technical amendments may be made without delay.²

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

Not applicable.

² 17 CFR 240.19b-4(f)(6)(iii).

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 has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

NASD

BY: _____
Barbara Z. Sweeney
Senior Vice President
and Corporate Secretary

Date: December 1, 2003

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASD-2003-177)

Self-Regulatory Organizations; Notice of Filing and Order Granting Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments to Interpretive Material 3130 ("IM-3130")

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 1, 2003, 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. Pursuant to Section 19(b)(3)(A)(i) of the Act³ and Rule 19b-4(f)(1) thereunder,⁴ NASD has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposed rule change effective immediately upon 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 is proposing to amend IM-3130. Below is the text of the proposed rule change.

Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(i).

IM-3130. Restrictions on a Member's Activity

(a) This explanation outlines and discusses some of the financial and operational deficiencies which could initiate action under Rule 3130. Paragraphs [(b)](c)(2) and [(c)](d)(2) of Rules 3130 and 3131 recognize that there are various unstated financial and operational reasons for which [the Association] NASD may impose restrictions on a member so as to prohibit its expansion or to require a reduction in overall level of business. These provisions are deemed necessary in order to provide for the variety of situations and practices which do arise and which, if allowed to persist, could result in increased exposure to customers and to broker/dealers.

(b) In the opinion of the Board of Governors, it would be impractical and unwise to attempt to identify and list all of the situations and practices [which] that might lead to the imposition of restrictions or the types of remedial actions [the Association] NASD may direct be taken because they are numerous and cannot be totally identified or specified with any degree of precision. The Board believes, however, that it would be helpful to members' understanding to list some of the other bases upon which [the Association] NASD may conclude that a member is in or approaching financial difficulty.

(c) For purposes of paragraphs [(b)](c)(2) and [(c)](d)(2) of Rule 3130, a member may be considered to be in or approaching financial or operational difficulty in conducting its operations and therefore subject to restrictions if it is determined by [the Association] NASD that any of the parameters specified therein are exceeded or one or more of the following conditions exist:

(1) through (8) No change

(d) For purposes of paragraphs [(b)](c)(2) and [(c)](d)(2) of Rule 3131, a member may be considered to be in or approaching financial or operational difficulty in conducting its operations and therefore subject to restrictions if it is determined by [the Association] NASD that any of the parameters specified therein are exceeded or one or more of the following conditions exist:

(1) No change

(2) The member has experienced a substantial change in the manner in which it processes its business which, in [the] NASD's view, [of the Association,] increases the potential risk of loss to customers and members.

(3) through (8) No change

(e) If [the Association] NASD determines that any of the conditions specified in paragraphs (c) or (d) of this explanation exist, it may require that the member take appropriate action by effecting one or more of the following actions until such time as [the Association] NASD determines they are no longer required:

(1) through (12) No change

(13) Be subject to such other restrictions or take such other action as [the Association] NASD deems appropriate under the circumstances in the public interest and for the protection of members.

* * * * *

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

The proposed rule change would: change references to "paragraphs (b)(2) and (c)(2)" of Rules 3030 and 3031 to "paragraphs (c)(2) and (d)(2)" in IM-3130(a), (c), (d), and (e); and change references to "the Association" to "NASD" in IM-3130, thereby conforming the rule language in IM-3130 to the rule language in Rules 3130 and 3131, as recently amended.⁵

(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 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 conforming references IM-3130 to renumbered paragraphs in recently amended Rules 3130 and 3131 and changing references to "the Association" to "NASD" is consistent with the protection of investors and the public interest.

(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

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 immediately effective pursuant to Section 19(b)(3)(A)(i) of the Act,⁶ and Rule 19b-4(f)(1) thereunder.⁷ 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.

NASD has requested that the Commission waive the 30-day pre-operative waiting period, which would make the proposed rule operative immediately. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day pre-operative period in this case because the proposed rule change is highly technical in nature, in that it is amending IM-3130 to conform references in that rule to recently amended Rules 3130 and 3131. For these reasons, the Commission waives the 30-day pre-operative period and designates that the proposal become operative immediately.

⁵ Release No. 34-48438 (File No. SR-NASD-2003-74 (Sept. 4, 2003), 68 Federal Register 53766 (Sept. 12, 2003).

⁶ 15 U.S.C. 78s(b)(3)(A)(i).

⁷ 17 CFR 240.19b-4(f)(1).

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 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.⁸

Margaret H. McFarland
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).