

March 5, 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-2003-31 - Margin Rule for Security Futures Contracts**

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 Patricia M. Albrecht, Office of General Counsel, Regulatory Policy and Oversight, NASD, at (202) 728-8026; e-mail [patricia.albrecht@nasd.com](mailto:patricia.albrecht@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: Hong-Anh Tran

**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)(3) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”), the National Association of Securities Dealers, Inc. (“NASD”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to extend until March 20, 2003, the effectiveness of the pilot program (“Pilot”) amending NASD Rule 2520 (“Margin Requirements”) to establish margin requirements for security futures contracts. The SEC approved the amendments on a pilot basis until March 6, 2003.<sup>1</sup>

The proposed extension is being made to allow NASD additional time to review comments it has received regarding the amendments and to ensure consistency with the amendments to New York Stock Exchange (“NYSE”) Rule 431 relating to margin requirements for security futures contracts that were also approved by the Commission on a pilot basis until March 6, 2003.<sup>2</sup>

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change to Rule 2520 was approved by unanimous written consent of the Executive Committee of the Board of Governors of NASD on October 16, 2002, which authorized the filing of the rule change with the SEC. Counsel for the NASDAQ Stock Market and NASD Dispute Resolution were provided an opportunity to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by NASD

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<sup>1</sup> Exchange Act Rel. No. 47244 (Jan. 24, 2003), 68 FR 5317 (Feb. 3, 2003). Specifically, the approval of the amendments to NASD Rule 2520 on a pilot basis allows NASD to facilitate the trading in security futures in securities accounts for those NASD members that are not also members of the NYSE while, at the same time, considering any comments it receives on the amendments to Rule 2520 relating to margin requirements for security futures contracts.

<sup>2</sup> See Exchange Act Rel. No. 47129 (Jan. 3, 2003), 68 FR 2094 (Jan. 15, 2003).

to its Subsidiaries. No other action by NASD is necessary for the filing of the proposed extension until March 20, 2003, of the effectiveness of the amendments to NASD Rule 2520.

(b) Questions regarding this rule filing may be directed to Gary L. Goldsholle, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD at (202) 728-8104; or Patricia M. Albrecht, Assistant General Counsel, Regulatory Policy and Oversight, NASD at (202) 728-8026.

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

(a) Purpose

On November 15, 2002, NASD filed with the SEC a proposed rule change to amend NASD Rule 2520 to establish margin rules for security futures contracts.<sup>3</sup> On January 15, 2003, NASD filed an amendment to the proposed rule change requesting that the Commission approve the proposed rule change on a pilot basis under the same terms as the approval on a pilot basis of the amendments to NYSE Rule 431.<sup>4</sup> The SEC approved the proposed rule change, as amended, on a pilot basis until March 6, 2003.<sup>5</sup>

NASD proposes to extend this Pilot until March 20, 2003, in order to allow NASD additional time to review comments it has received regarding the amendments to NASD Rule

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<sup>3</sup> See Exchange Act Rel. No. 46995 (Dec. 13, 2002), 67 FR 78543 (Dec. 24, 2002) (Notice of Filing of a Proposed Rule Change and Amendment No. 1 to NASD Rule 2520 Relating to Margin Rule Amendments for Security Futures Contracts); see also Letter from Gary L. Goldsholle, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, ("Division"), Commission, dated November 22, 2002 ("Amendment No. 1"). Amendment No. 1 made technical changes to the proposed rule text.

<sup>4</sup> See Letter from Gary L. Goldsholle, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated January 15, 2003.

<sup>5</sup> Exchange Act Release No. 47244 (Jan. 24, 2003), 68 FR 5317 (Feb. 3, 2003).

2520 and also to ensure consistency with the amendments to NYSE Rule 431 relating to margin requirements for security futures contracts.<sup>6</sup>

(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 by establishing margin rules for security futures that are comparable with those developed by the NYSE.

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 has received one written comment on the Pilot. NASD is currently considering the contents of this 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)

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 and does not impose any

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<sup>6</sup> See Exchange Act Rel. No. 47129 (Jan. 3, 2003), 68 FR 2094 (Jan. 15, 2003).

significant burden on competition. NASD believes that this rule change is non-controversial; it will allow the Pilot to continue in effect on an uninterrupted basis and allow NASD to consider comments it has received on the Pilot and ensure consistency with the amendments to NYSE Rule 431 relating to margin requirements for security futures contracts.

NASD requests that the Commission waive both the five-day notification period and the 30-day delayed operative date specified in Rule 19b-4(f)(6)(iii).<sup>7</sup> Waiver of these periods will allow NASD to continue the Pilot, which will allow customers of NASD member firms that are not members of the NYSE to continue trading security futures contracts in securities accounts on the same margin terms as customers of NYSE member firms.

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 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: March 5, 2003

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<sup>7</sup> 17 CFR 240.19b-4(f)(6)(iii).

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-NASD-2003-31)

Self-Regulatory Organizations; Notice of Filing and Order Granting Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Extension of the Pilot with Respect to Amendments to NASD Rule 2520 Relating to Margin Requirements for Security Futures Contracts

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 March 5, 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. NASD has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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 proposed rule change extends until March 20, 2003, the effectiveness of the pilot program (“Pilot”) amending NASD Rule 2520 to establish margin requirements for security futures contracts. The SEC approved these amendments on a pilot basis until March 6, 2003.<sup>4</sup>

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<sup>1</sup> 15 U.S.C. § 78s(b)(1).

<sup>2</sup> 17 CFR § 240.19b-4.

<sup>3</sup> 17 CFR § 240.19b-4.

<sup>4</sup> Exchange Act Rel. No. 47244 (Jan. 24, 2003), 68 FR 5317 (Feb. 3, 2003). Specifically, the approval of the amendments to NASD Rule 2520 on a pilot basis allows NASD to facilitate the trading in security futures in securities accounts for those NASD members that are not also members of the NYSE while, at the same time, considering any comments it receives on the amendments to Rule 2520 relating to margin requirements for security futures contracts.

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

On November 15, 2002, NASD filed with the SEC a proposed rule change to amend NASD Rule 2520 to establish margin rules for security futures contracts.<sup>5</sup> On January 15, 2003, NASD filed an amendment to the proposed rule change requesting that the Commission approve the proposed rule change on a pilot basis under the same terms as the approval on a pilot basis of the amendments to New York Stock Exchange ("NYSE") Rule 431.<sup>6</sup> The SEC approved the proposed rule change, as amended, on a pilot basis until March 6, 2003.<sup>7</sup>

NASD proposes to extend this Pilot until March 20, 2003, in order to allow NASD additional time to review comments it has received regarding the amendments and also to ensure

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<sup>5</sup> See Exchange Act Rel. No. 46995 (Dec. 13, 2002), 67 FR 78543 (Dec. 24, 2002) (Notice of Filing of a Proposed Rule Change and Amendment No. 1 to NASD Rule 2520 Relating to Margin Rule Amendments for Security Futures Contracts); see also Letter from Gary L. Goldsholle, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, ("Division"), Commission, dated November 22, 2002 ("Amendment No. 1"). Amendment No. 1 made technical changes to the proposed rule text.

<sup>6</sup> See Letter from Gary L. Goldsholle, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated January 15, 2003.

<sup>7</sup> Exchange Act Release No. 47244 (January 24, 2003), 68 FR 5317 (February 3, 2003).

consistency with the amendments to NYSE Rule 431 relating to margin requirements for security futures contracts.<sup>8</sup>

(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 by establishing margin rules for security futures that are comparable with those developed by the NYSE.

(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

NASD has one received written comment on the original proposed rule change that was filed with the Commission on November 15, 2002 and amended on January 15, 2003. NASD is currently considering the contents of this comment.

III. DATE OF EFFECTIVENESS OF THE PROPOSED RULE CHANGE AND TIMING FOR COMMISSION ACTION

The proposed rule change has been filed by NASD as a “non-controversial” rule change under Rule 19b-4(f)(6) under the Act;<sup>9</sup> it will allow the Pilot to continue in effect on an uninterrupted basis and allow NASD to consider comments it has received on the Pilot and ensure

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<sup>8</sup> See Exchange Act Rel. No. 47129 (Jan. 3, 2003), 68 FR 2094 (Jan. 15, 2003).

<sup>9</sup> 17 CFR § 240.19b-4(f)(6).

consistency with the amendments to NYSE Rule 431 relating to margin requirements for security futures contracts.

The Commission finds that the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; and (2) does not impose any significant burden on competition. In addition, the Commission is granting NASD's request to waive both the five-day notification period and the 30-day delayed operative date specified in Rule 19b-4(f)(6)(iii).<sup>10</sup> Consequently, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

#### 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. 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].

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<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

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