

Proposed Rule Change by National Association of Securities Dealers
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

<input type="checkbox"/> Initial	<input checked="" type="checkbox"/> Amendment	<input type="checkbox"/> Withdrawal	<input checked="" type="checkbox"/> Section 19(b)(2)	<input type="checkbox"/> Section 19(b)(3)(A)	<input type="checkbox"/> Section 19(b)(3)(B)
			Rule		
<input type="checkbox"/> Pilot	<input type="checkbox"/> Extension of Time Period for Commission Action	<input type="text" value=""/> Date Expires	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

<input type="checkbox"/> Exhibit 2 Sent As Paper Document	<input type="checkbox"/> Exhibit 3 Sent As Paper Document
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Description
Provide a brief description of the proposed rule change (limit 250 characters).

Contact Information
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name	<input type="text" value="Shirley"/>	Last Name	<input type="text" value="Weiss"/>
Title	<input type="text" value="Associate General Counsel"/>		
E-mail	<input type="text" value="shirley.weiss@nasd.com"/>		
Telephone	<input type="text" value="(202) 728-8844"/>	Fax	<input type="text" value="(202) 728-8264"/>

Signature
Pursuant to the requirements of the Securities Exchange Act of 1934,

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

Date	<input type="text" value="03/17/2005"/>
By	<input type="text" value="Marc Menchel"/>
	(Name)
	<input type="text" value="Executive Vice President and General Counsel"/>
	(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

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.

* * * * *

9200. DISCIPLINARY PROCEEDINGS

* * * * *

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 all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with [the] NASD Rules [of the Association].

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

—Article IV of the NASD By-Laws—Failure to timely submit amendments to Form BD.

—Article V of the NASD By-Laws —Failure to timely submit amendments to Form U4.

—Article V of the NASD By-Laws —Failure to timely submit amendments to Form U5.

—Rule 1120—Failure to comply with the Firm Element of the continuing education requirements.

—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, 6130, 6130A, 6170, 6170A, 6230[6240], 6420, 6550, 6620, and 6720—Transaction reporting in equity and debt securities [, convertible debt, and high yield securities.], including Automated Confirmation Transaction Service ("ACT") and Trade Reporting and Comparison Service ("TRACS") transaction reporting and audit trail requirements.

—Rule 5262—ITS Trade-Through Rule.

—Rule 5263—Locked and Crossed Markets Rule.

[—Rules 6130 and 6170—Transaction reporting to the Automatic Confirmation Transaction Service ("ACT").]

—Rules 6954 and 6955—Failure to submit data in accordance with the Order Audit Trail System ("OATS").

—Rule 11870—Failure to abide by Customer Account Transfer Contracts.

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

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

—SEC Exchange Act Rule 11Ac1-1(c)(5)—Failure to properly update published quotations in certain Electronic Communication Networks ("ECN[']s").

—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 timely 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

The proposed rule change was approved by the Board of Directors of NASD Regulation, Inc. at its meeting on November 12, 2003, which authorized the filing of the rule change with the SEC. Counsel for The Nasdaq Stock Market 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)(ii) of Article VII of the NASD By-Laws permits the NASD Board of Governors to adopt NASD rules 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 60 days following Commission approval. The effective date will be 30 days following publication of the Notice to Members announcing approval of the proposed rule change.

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

(a) Purpose

Amendment No. 1: (1) makes certain changes to the text of IM-9216 as submitted to the Commission on February 10, 2004;¹ (2) modifies the "Discussion" section to refer to specific NASD rules; (3) updates footnotes 3 through 6 (numbered 5 through 8 in Exhibit 1); (4) changes "non exchange-listed securities" to "exchange-listed securities" in the description of "The Locked and Crossed Markets Rule"; (5) adds violations of Rules 4632A, 6130A, and 6170A, relating to NASD's Trade Reporting and Comparison Service ("TRACS") rules governing transaction reporting and audit trail requirements for NASD's Alternative Display Facility ("ADF"); (6) reorganizes the MRVP to combine in one entry all the transaction reporting and audit trails requirements relating to debt and equity securities; and (7) changes "the Association" to "NASD" in the MRV relating to Rule 3110.²

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.³ In 1993, pursuant to SEC Rule 19d-1(c), NASD

¹ Amendment No. 1: (1) corrects a typographical error in the original rule filing by changing "Rule 6650" to "Rule 6550" with respect to the MRV concerning transaction reporting in equity and debt securities; and (2) corrects the original rule filing by adding back in the full name of "ACT" and "OATS."

² NASD no longer refers to itself or its subsidiary, NASD Regulation, Inc., using its full corporate name, "the Association," "the NASD," or "NASD Regulation, Inc." Instead, NASD uses "NASD" unless otherwise appropriate for corporate or regulatory reasons.

³ See Exchange Act Rel. No. 21013 (June 1, 1984), 49 FR 23833 (June 8, 1984) (SEC File No. S7-983A (Obligations of SROs)).

established an MRVP.⁴ See NASD Rule 9216(b). In 2001, the SEC approved significant amendments to NASD's MRVP.⁵ In addition, in 2004, the SEC approved an amendment to NASD's MRVP to include failure to timely submit amendments to the Form U5 ("Uniform Termination Notice for Securities Industry Registration").⁶

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 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.

⁴ See Exchange Act Rel. No. 32383 (May 28, 1993), 58 FR 31768 (June 4, 1993) (SR-NASD-93-6); see also Notice to Members 93-42 (July 1993).

⁵ See Exchange Act Rel. No. 44512 (July 3, 2001), 66 FR 36812 (July 13, 2001) (SR-NASD-00-39).

⁶ See Exchange Act Rel. No. 50466 (Sept. 24, 2004), 69 FR 58568 (Sept. 30, 2004) (SR-NASD-2004-121).

Discussion

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

- **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.

- **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 that was locked or crossed, the member must satisfy the locked or crossed bid (offer) up to the size of its locking or crossing offer (bid), or adjust its 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 exchange-listed securities.

- **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 Rule 6230, the Trade Reporting and Compliance Engine ("TRACE") transaction reporting rule.⁷ 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.

- **Transaction Reporting and Audit Trail Requirements in Equity and Debt Securities**

NASD proposes to add violations of Rules 4632A, 5430, 6130A, and 6170A, which relate to NASD's TRACS rules governing transaction reporting and audit trail requirements for NASD's ADF to the MRVP.⁸ The ADF is a quotation collection, trade comparison, and trade reporting facility developed by NASD in accordance with the SEC's SuperMontage Approval Order. Currently, the MRVP includes transaction reporting for various systems, including Nasdaq's Automated Confirmation Transaction Service ("ACT"). NASD believes that including violations of the ADF transaction reporting requirements in the MRVP is consistent with the current minor rule violations for transaction reporting in equity securities. NASD also proposes to reorganize its MRVP to combine in one entry all the transaction reporting and audit trail requirements relating to debt and equity securities.

⁷ Prior to July 1, 2002, the Rule 6200 Series pertained to FIPS, and Rule 6240 governed transaction reporting in high yield fixed income securities.

⁸ NASD notes that Rule 5430 governs both TRACS and ACT transaction reporting requirements.

- **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.

- **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 emergency contact information under Rule 3520 or failure to provide or update its executive representative designation and contact information as required by Rule 1150 would be eligible for disposition as a minor rule violation under this category.⁹

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Notice to Members announcing Commission approval of the proposed rule change.

(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 the proposed rule change is consistent with Section 15A(b)(7) in that it works to safeguard adequately the interests of investors while establishing fair and reasonable rules for members and persons associated with members. The rule change also is consistent with Section 15A(b)(8) in that it furthers 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

⁹ See also Rule 1120(a)(7) (requirement to provide continuing education regulatory element contact person). NASD notes that it generally has sought to achieve consistency regarding the frequency in which members must review and update contact information (namely, within 17 business days after the end of each calendar quarter).

staff with the ability to impose a meaningful sanction for violations of the rules discussed herein 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

Written comments were neither solicited nor received.

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

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

Exhibit 4. Full text of rule change marking changes from the proposed rule change as filed on February 10, 2004.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- _____ ; File No. SR-NASD-2004-025)

SELF-REGULATORY ORGANIZATIONS

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")¹ and Rule 19b-4 thereunder,² notice is hereby given that on _____, 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 proposing 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.

* * * * *

¹ 15 U.S.C. § 78s(b)(1).

² 17 CFR 240.19b-4.

9200. DISCIPLINARY PROCEEDINGS

* * * * *

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 all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with [the] NASD Rules [of the Association].

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

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—Rule 1120—Failure to comply with the Firm Element of the continuing education requirements.

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

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—Rules 4632, 4632A, 4642, 4652, 5430, 6130, 6130A, 6170, 6170A, 6230[6240], 6420, 6620, 6650, and 6720—Transaction reporting in equity and debt securities[, convertible debt, and high yield securities.], including Automated Confirmation Transaction Service ("ACT") and Trade Reporting and Comparison Service ("TRACS") transaction reporting and audit trail requirements.

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—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

1. Purpose

Amendment No. 1: (1) makes certain changes to the text of IM-9216 as submitted to the Commission on February 10, 2004;³ (2) modifies the "Discussion" section to refer to specific NASD rules; (3) updates footnotes 5 through 8; (4) changes "non exchange-listed securities" to "exchange-listed securities" in the description of "The Locked and Crossed Markets Rule"; (5) adds violations of Rules 4632A, 6130A, and 6170A, relating to NASD's Trade Reporting and Comparison Service ("TRACS") rules governing transaction reporting and audit trail requirements for NASD's Alternative Display Facility ("ADF"); (6) reorganizes the MRVP to combine in one entry all the transaction reporting and audit trails requirements relating to debt and equity securities; and (7) changes "the Association" to "NASD" in the MRV relating to Rule 3110.⁴

Background

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established an MRVP.⁶ See NASD Rule 9216(b). In 2001, the SEC approved significant amendments to NASD's MRVP.⁷ In addition, in 2004, the SEC approved an amendment to NASD's MRVP to include failure to timely submit amendments to the Form U5 ("Uniform Termination Notice for Securities Industry Registration").⁸

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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.

⁶ See Exchange Act Rel. No. 32076 (Mar. 31, 1993), 58 FR 18291 (Apr. 8, 1993) (SR-NASD-93-6); see also Notice to Members 93-42 (July 1993).

⁷ See Exchange Act Rel. No. 44512 (July 3, 2001), 68 FR 36812 (July 13, 2001) (SR-NASD-00-39).

⁸ See Exchange Act Rel. No. 50466 (Sept. 24, 2004), 69 FR 58568 (Sept. 30, 2004) (SR-NASD-2004-121).

Discussion

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

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- **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 exchange-listed securities.

- **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 Rule 6230, the Trade Reporting and Compliance Engine ("TRACE") transaction reporting rule.⁹ 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.

- **Transaction Reporting and Audit Trail Requirements in Equity and Debt Securities**

NASD proposes to add violations of Rules 4632A, 5430, 6130A, and 6170A, which relate to NASD's TRACS rules governing transaction reporting and audit trail requirements for NASD's ADF to the MRVP.¹⁰ The ADF is a quotation collection, trade comparison, and trade reporting facility developed by NASD in accordance with the SEC's SuperMontage Approval Order. Currently, the MRVP includes transaction reporting for various systems, including Nasdaq's Automated Confirmation Transaction Service ("ACT"). NASD believes that including violations of the ADF transaction reporting requirements in the MRVP is consistent with the current minor rule violations for transaction reporting in equity securities. NASD also proposes to reorganize its MRVP to combine in one entry all the transaction reporting and audit trail requirements relating to debt and equity securities.

⁹ Prior to July 1, 2002, the Rule 6200 Series pertained to FIPS, and Rule 6240 governed transaction reporting in high yield fixed income securities.

¹⁰ NASD notes that Rule 5430 governs both TRACS and ACT transaction reporting requirements.

- **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.

- **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 emergency contact information under Rule 3520 or failure to provide or update its executive representative designation and contact information as required by Rule 1150 would be eligible for disposition as a minor rule violation under this category.¹¹

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Notice to Members announcing Commission approval of the proposed rule change.

2. 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 persons. NASD believes that the addition of these violations to the MRVP

¹¹ See also Rule 1120(a)(7) (requirement to provide continuing education regulatory element contact person). NASD notes that it generally has sought to achieve consistency regarding the frequency in which members must review and update contact information (namely, within 17 business days after the end of each calendar quarter).

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. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2004-025 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609.

All submissions 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 the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR-NASD-2004-025 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Secretary

¹² 17 CFR 200.30-3(a)(12).

EXHIBIT 4

New language in the filing dated February 10, 2004, is underlined; deletions in the February 10, 2004 filing are in [brackets]. New language added in Amendment No. 1 is double underlined; deletions made in Amendment No. 1 are [[double bracketed]].

* * * * *

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 advertisements with the Association within the required times 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 all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with [[the]] NASD Rules [[of the Association]].

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

—Article IV of the NASD By-Laws—Failure to timely submit amendments to Form BD.

—Article V of the NASD By-Laws —Failure to timely submit amendments to Form ~~[[U-4]]~~ U4.

—Article V of the NASD By-Laws —Failure to timely submit amendments to Form U5.

—Rule 1120—Failure to comply with the Firm Element of the 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, 6130, 6130A, 6170, 6170A, 6230~~[[6240]]~~, 6420, 6550, ~~[[6650,]]~~ 6620, and 6720—Transaction reporting in equity and debt securities [,convertible debt, and high yield securities.], including Automated Confirmation Transaction Service ("ACT") and Trade Reporting and Comparison Service ("TRACS") transaction reporting and audit trail requirements.

—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 the Order Audit Trail System ("OATS").

—Rule 11870—Failure to abide by Customer Account Transfer Contracts.

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

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

—SEC Exchange Act Rule 11Ac1-1(c)(5)—Failure to properly update published quotations in certain Electronic Communication Networks ("ECN[[]]s").

—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 timely 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.