prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership, is necessary for the protection of investors; inefficient procedures for clearance and settlement impose unnecessary costs on investors; and that new data processing and communications techniques create the opportunity for more efficient, effective and safe procedures for clearance and settlement.[26] Profile accomplishes these objectives by providing a more efficient mechanism for the movement of investors' securities positions than the current multi-step, paper-based DRS processing.

Participation in DRS by issuers or DRS limited participants is not mandatory.[27] Issues regarding risks and liabilities to issuers or transfer agents[28] are internal business issues and should be addressed prior to an issuer or transfer agent's decision to participate or participate further in DRS. On the other hand, participation in DRS by investors is not always voluntary. Although it was originally contemplated that shareholders would initiate their participation by individually choosing to hold their securities as DRS positions, DRS has developed so that in most situations issuers and transfer agents are making the decision for investors by establishing DRS positions on their books instead of issuing certificates. The vast majority of shares issued to shareholders as DRS positions have been the result of corporate actions (*e.g.*, splits, mergers, and spin-offs) without any election by the shareholders.

The Concept Release indicated that although industry participants would be free to decide for themselves whether they wanted to offer investors the services that comprise DRS, once the service is offered, its implementation and operation must be efficient, safe, and largely transparent to investors.[29] Therefore, DRS should not materially disadvantage shareholders when compared with the current processing of physical securities. The delays caused by requiring shareholders to either contact the DRS limited participant directly or to send transaction advices through the mail, as suggested by some commenters as the preferable method to process shareholder requests for transferring their shares to a broker, generally precludes shareholders holding DRS positions from executing transactions on the same basis as investors holding certificates. The use of Profile in DRS should reduce these delays.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing of DTC's second amendment. The Commission finds good cause for so approving the proposed rule change because Option (4) was previously published in its entirety and the public had an opportunity to comment on its merits. The Commission believes accelerated approval will allow DRS participants to prepare for any operational changes that may be necessary in light of DTC's Year 2000 shutdown date of September 15, 1999.

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. 20549–0609. 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, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the File No. SR–DTC–99–16 and should be submitted by October 12, 1999.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–99–16) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–24495 Filed 9–20–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41875; File No. SR–NASD–99–41]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Opening of Day-Trading Accounts

September 14, 1999.

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 August 20, 1999, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly-owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend the 2300 Series of the Rules of the NASD to include new Rule 2360 and Rule 2361 regarding the opening of day-trading accounts. Below is the text of the proposed rule change. Proposed new language is in *italics.*

Rule 2360. Approval Procedures for Day-Trading Accounts

(a) No member that is promoting a day-trading strategy, directly or indirectly, shall open an account for or on behalf of a non-institutional customer, unless, prior to opening the account, the member has furnished to the customer the risk disclosure

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[26] 15 U.S.C. 78q–1(a)(1) (A), (B), and (C).

[27] However, once an issuer and DRS limited participant decided to participate in DRS, use of Profile, which includes such things as the acceptance of the electronic medallion guarantee, is required.

[28] In their comment letters to DTC's proposed rule change, some transfer agents contend there are business risks and liability concerns associated with use of the Profile feature. Because participation in DRS is not mandatory, the Commission is not addressing these issues in this order. The Commission urges representatives of the issuer, transfer agent, and broker-dealer community to continue discussions to resolve the outstanding DRS issues relative to processing and liability.

[29] *Supra* note 6.

[30] 17 CFR 200.30–3(a)(12)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

statement set forth in Rule 2361 and has:

(1) approved the customer's account for a day-trading strategy in accordance with the procedures set forth in paragraph (b) and prepared a record setting forth the basis on which the member has approved the customer's account; or

(2) received from the customer a written agreement that the customer does not intend to use the account for the purpose of engaging in a day-trading strategy, except that the member may not rely on such agreement if the member knows that the customer intends to use the account for the purpose of engaging in a day-trading strategy.

(b) In order to approve a customer's account for a day-trading strategy, a member shall have reasonable grounds for believing that the day-trading strategy is appropriate for the customer. In making this determination, the member shall exercise reasonable diligence to ascertain the essential facts relative to the customer, including his or her financial situation, tax status, prior investment and trading experience, and investment objectives.

(c) If a member that is promoting a day-trading strategy opens an account for a non-institutional customer in reliance on a written agreement from the customer pursuant to paragraph (a)(2) and, following the opening of the account, knows that the customer is using the account for a day-trading strategy, then the member shall be required to approve the customer's account for a day-trading strategy in accordance with paragraph (a)(1) as soon as practicable, but in no event later than 10 days following the date that such member knows that the customer is using the account for such a strategy.

(d) Any record or written statement prepared or obtained by a member pursuant to this rule shall be preserved in accordance with Rule 3110(a).

(e) For purposes of this rule, the term ''day-trading strategy'' means an overall trading strategy characterized by the regular transmission by a customer of intra-day orders to effect both purchase and sale transactions in the same security or securities.

(f) For purposes of this rule, the term ''non-institutional customer'' means a customer that does not qualify as an ''institutional account'' under Rule 3110(c)(4).

Rule 2361. Day-Trading Risk Disclosure Statement

(a) Except as provided in paragraph (b), no member that is promoting a day-trading strategy, directly or indirectly, shall open an account for or on behalf of a non-institutional customer unless, prior to opening the account, the member has furnished to the customer, in writing or electronically, the following disclosure statement:

You should consider the following points before engaging in a day-trading strategy. For purposes of this notice, a ''day-trading strategy'' means a strategy characterized by the regular transmission by a customer of intra-day orders to effect both purchase and sale transactions in the same security or securities.

- *Day trading can be extremely risky. Day trading generally is not appropriate for someone of limited resources and limited investment or trading experience and low risk tolerance. You should be prepared to lose all of the funds that you use for day trading. In particular, you should not fund day-trading activities with retirement savings, student loans, second mortgages, emergency funds, funds set aside for purposes such as education or home ownership, or funds required to meet your living expenses.*
- *Be cautious of claims of large profits from day trading. You should be wary of advertisements or other statements that emphasize the potential for large profits in day trading. Day trading can also lead to large and immediate financial losses.*
- *Day trading requires knowledge of securities markets. Day trading requires in-depth knowledge of the securities markets and trading techniques and strategies. In attempting to profit through day trading, you must compete with professional, licensed traders employed by securities firms. You should have appropriate experience before engaging in day trading.*
- *Day trading requires knowledge of a firm's operations. You should be familiar with a securities firm's business practices, including the operations of the firm's order execution systems and procedures.*
- *Day trading may result in your paying large commissions. Day trading may require you to trade your account aggressively, and you may pay commissions on each trade. The total daily commissions that you pay on your trades may add to your losses or significantly reduce your earnings.*
- *Day trading on margin or short selling may result in losses beyond your initial investment. When you day trade with funds borrowed from a firm or someone else, you can lose more than the funds you originally placed at risk. A decline in the value of the securities that are purchased may require you to provide additional funds to the firm to avoid the forced sale of those securities or other securities in your account. Short selling as part of your day-trading strategy also may lead to extraordinary losses, because you may have to purchase a stock at a very high price in order to cover a short position.*

(b) In lieu of providing the disclosure statement specified in paragraph (a), a member that is promoting a day-trading strategy may provide to the customer, in writing or electronically, prior to opening the account, an alternative disclosure statement, provided that:

(1) The alternative disclosure statement shall be substantially similar to the disclosure statement specified in paragraph (a); and

(2) The alternative disclosure statement shall be filed with the Association's Advertising Department (Department) for review at least 10 days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if changes are recommended by the Association, shall be withheld from use until any changes specified by the Association have been made or, if expressly disapproved, until the alternative disclosure statement has been refiled for, and has received, Association approval. The member must provide with each filing the anticipated date of first use.

(c) For purposes of this rule, the term ''day-trading strategy'' shall have the meaning provided in Rule 2360(e).

(d) For purposes of this rule, the term ''non-institutional customers'' means a customer that does not qualify as an ''institutional account'' under Rule 3110(c)(4).

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

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Introduction

Certain brokerage firms focus primarily, or even exclusively, on promoting day-trading strategies to individuals. These firms generally advertise on the Internet and elsewhere as ''day-trading'' firms or otherwise promote their execution and other services as desirable for ''serious'' or ''professional'' traders. In addition, many of these firms offer training on day-trading techniques, as well as provide computer facilities and software packages specifically designed to support and accommodate day trading.

Day trading, however, raises unique investor protection concerns. In general, day traders seek to profit from very small movements in the price of a security. Such a strategy often requires aggressive trading of a brokerage account. As a result, day trading generally requires a significant amount of capital, a sophisticated understanding of securities markets and trading techniques, and high risk tolerance. Even experienced day traders with in-depth knowledge of the securities markets may suffer severe and unexpected financial losses.

The Proposal in Special Notice to Members 99–32

To address investor protection concerns arising from day-trading activities, on April 15, 1999, NASD Regulation issued Special Notice to Members 99–32 soliciting comment on proposed rules regarding approval procedures for day-trading accounts. The proposal set forth in the Notice required a firm that had *recommended* an intra-day trading strategy to an individual to approve the individual's account for day trading. The proposal also required the firm, as part of the account approval process, to determine that the strategy was appropriate for the customer and to provide a disclosure statement to the customer discussing the risks associated with day-trading activities. As further discussed below, NASD Regulation received 39 comment letters in response to Special Notice to Members 99–32.

The Revised Proposed Rule Change

Based on the comments received in response to the Notice and input provided by the various NASD standing-committees, NASD Regulation has revised the proposed rule change concerning the opening of day-trading accounts. The proposed rule change, similar to its predecessor in Notice to Members 99–32, focuses on disclosing the basic risks of engaging in a day-trading strategy and assessing the appropriateness of day-trading strategies for individuals.

In particular, the proposed rule change would require a firm that is *promoting a day-trading strategy*, directly or indirectly, to deliver a specified risk disclosure statement to a non-institutional customer prior to opening an account for the customer. In addition, the firm would be required to (1) approve the customer's account for day trading or (2) obtain a written agreement from the customer stating that the customer does not intend to use the account for day-trading activities. A firm would not be permitted to rely on the written agreement from the customer if the firm knows that the customer intends to use the account for day trading. In addition, if a firm knows that a customer who provided such an agreement is engaging in a day-trading strategy, the firm would be required to approve the account for day trading.

As part of the account approval process, a firm would be required to have reasonable grounds for believing that the day-trading strategy is appropriate for the customer. In making this determination, the firm would be required to exercise reasonable diligence to ascertain the essential facts relative to the customer, including his or her financial situation, tax status, prior investment and trading experience, and investment objectives. The firm also would be required to prepare a record setting forth the basis on which the firm has approved the customer's account. Any record or written statement prepared or obtained by the firm pursuant to the proposed rule change would have to be preserved in accordance with NASD Rule 3110(a).

Requirement To Approve the Account for Day Trading

Elimination of the Term ''Recommend''

As noted above, the proposal articulated in Notice to Members 99–32 applied to firms that had *recommended* an intra-day trading strategy to individual investors. Many commenters raised serious concerns with the proposal's use of the term ''recommend.'' While the proposed rules did not define ''recommendation'' in the context of day trading, Notice to Members 99–32 provided general guidance on the types of activities that would constitute a recommendation in this context. The Notice stated that in general, a member would be recommending a day-trading strategy for purposes of the proposed rules if it affirmatively promoted day trading through advertising, training seminars, or direct outreach programs, and an individual engaged in day trading in response to those solicitations.

Many commenters voiced concerns that the Notice adopted an overly broad view of ''recommendation,'' and feared that this broader view would be applied in other contexts. In particular, these commenters were concerned that advertisements or other promotions alone would be deemed to trigger a firm's duty to customers under the NASD's general suitability rule, Rule 2310. In this regard, one commenter stated its belief that the historical understanding that a recommendation is a specific communication from a broker to a customer at a specific time must be maintained. A second commenter suggested that the rules include a clear statement that ''recommendation'' for purposes of the rules shall mean ''recommendation'' as that term is commonly used throughout NASD rules, other Notices to Members, and NASD interpretative letters. This same commenter believed the rules should explicitly state that advertising does not constitute a recommendation for purposes of the proposed rules.

Several commenters suggested specific interpretations of the term ''recommendation'' in the day-trading context. For instance, one commenter expressed the view that the types of conduct that constituted ''recommending'' involved actively reaching out to the investing public with the goal of reaping financial benefits from the recommendation being made. The commenter also believed that the definition of recommendation should expressly exclude conduct such as solely operating a Web site that provided general financial information and news. A second commenter suggested exempting from the proposed rules those Internet-based firms that do not provide individualized instructions or guidance with respect to day trading, and that do not promote or endorse particular investment strategies to customers on an individual basis. Many commenters, after addressing issues raised by the proposal's use of the term ''recommendation,'' suggested that the proposal be limited to a risk disclosure requirement.

In contrast, several commenters believed that the proposed rules should apply to a broader scope of firms and firm activities, such as to any firm that permits or accepts intra-day trading transactions. In this regard, one commenter opined that all firms promoting, advertising, recommending, or providing their customers with the opportunity to day trade should be required to comply with the rules. Another commenter suggested that the proposed rules should apply to all firms that promote or advertise day-trading activities or that have more than a certain percentage of day-trading accounts.

After considering the comments, NASD Regulation has revised the proposed rule change to apply to those firms that are ''promoting a day-trading strategy.'' This revision should address commenters' concerns that the interpretation of the term ''recommendation'' in the day-trading context could obfuscate use of the term in the general suitability area. By using the concept of ''promoting a day-trading strategy,'' the proposed rule change also would more clearly apply to those situations where a member firm either solicits a person on an individual basis or advertises to the general public.

NASD Regulation has determined not to define ''promoting a day-trading strategy'' for purposes of the proposed rule change. However, NASD Regulation believes that the promotion by a member of efficient execution services or lower execution costs based on multiple trades alone would *not* trigger the requirements under the proposed rule change. In addition, merely providing general investment research or advertising the high quality or prompt availability of such general research would *not* constitute the promotion of day trading under the proposal. Similarly, merely having a Web site that provides general financial information or news or that allows the multiple entry of intra-day purchases and sales of the same securities would *not* constitute the promotion of day trading.

However, a member would be subject to the proposed rule change if it affirmatively promotes day-trading activities or strategies through advertising, training seminars, or direct outreach programs. For instance, a firm generally would be subject to the proposed rule change if its advertisements address the benefits of day trading, rapid-fire trading, or momentum trading, or encourage persons to trade or profit like a professional trader. A firm also would be subject to the proposed rule change if it promotes its day-trading services through a third party. Moreover, the fact that many of a firm's customers are engaging in a day-trading strategy would be relevant in determining whether a firm has promoted itself in this way.

Notably, while the proposed rule change does not define the term ''promoting a day-trading strategy,'' firms could submit their advertisements to NASD Regulation's Advertising Department for review and guidance on whether the content of the advertisement constitutes such activity for purposes of the rule change. As a result, the proposed rule change, as revised, should both limit concerns about any effect of the proposal on the NASD's general suitability rule and allow firms to better determine whether a particular advertisement would trigger the rule prior to publication or distribution of the advertisement.

Persons Covered by the Proposed Rules

Comments also were varied regarding whether any proposed day-trading rules should reach a broader range of customers. One commenter stated that the application of the rules should not be limited to natural persons, but should include ''non-institutional customers'' as defined by NASD Rules. This commenter noted that many day traders have opened accounts under partnership or corporate names and that these customers typically are no more sophisticated than customers who open accounts in their own names. Several commenters also believed that all existing customers should be covered by day-trading rules or, at a minimum, receive a risk disclosure statement. One individual suggested that any proposed day-trading rules should apply to all new day-trading *accounts,* rather than to new customers.

In response to commenter's concerns, NASD Regulation has determined to revise the proposal to apply to all non-institutional customers. For purposes of the proposed rule change, the term ''non-institutional customer'' would mean a customer that does not qualify as an ''institutional account'' under NASD Rule 3110(c)(4). Rule 3110(c)(4) defines ''institutional account'' to mean the account of (1) a bank, savings and loan association, insurance company, or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or agency or office performing like functions); or (3) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million. Applying the proposed rule change to non-institutional customers would ensure that most individuals would be covered by the proposed rule change, regardless of whether they engage in day-trading activities in their own name or in the name of a corporation or partnership. As revised, the proposed rule change would not apply to an existing customer unless the customer opens a new account at a firm that is promoting a day-trading strategy.

Accounts Used For Purposes Other Than Day-Trading Activities

As an alternative to approving an account for a day-trading strategy, the proposed rule change would permit a firm that is promoting a day-trading strategy to obtain from the customer a written agreement that the customer does not intend to use the account for the purposes of day trading (''other-use agreement''). In addition, the firm would be required to provide a risk disclosure statement to the customer even if the firm obtains an other-use agreement. A firm would not be permitted to rely on an other-use agreement if it knows that the customer intends to use the account for day trading. Moreover, if a firm opens an account for a customer in reliance on an other-use agreement, but later knows that the customer is using the account for day-trading activities, then the firm would be required to approve the customer's account for day trading in accordance with the rule as soon as practicable, but in no event later than ten days from the date of discovery.

Elements To Consider in Making Appropriateness Determinations

Commenters also suggested additional elements that a firm should consider in order to assess the appropriateness of a day-trading strategy for an individual. For example, several commenters believed that firms should be required to determine the source of funds that an individual intends to use for day-trading activities. Other commenters, however, voiced concerns that any such requirement would be an invasion of privacy or questioned why this requirement would not apply to all types of brokerage accounts. One individual believed that all persons should be required to meet a minimum net worth standard in order to engage in day trading.

After considering the comments, NASD Regulation has revised the proposed rule change to require a firm that is promoting a day-trading strategy to have reasonable grounds for believing that the strategy is appropriate for the customer and to exercise reasonable diligence to ascertain the essential facts relative to the customer. The proposed rule change continues to require a firm to review the customer's financial situation, prior investment and trading experience, and investment objectives. A firm also would be expressly required to review the customer's tax status. The proposed rule change, however, would not require firms to determine the source of funds, primarily because of concerns with defining the scope of any such obligation and the risks of imposing disproportionate burdens on firms.

Definition of an Intra-Day Trading Strategy

The proposal set forth in Notice to Members 99–32 defined ''intra-day trading strategy'' to mean ''an overall trading strategy characterized by the regular transmission by a customer of multiple intra-day electronic orders to effect both purchase and sale transactions in the same security or securities.'' Several commenters suggested a broader definition of the term. For example, one commenter stated that the term should include a person who regularly makes only one buy and one sale of a particular security or group of securities on a daily basis. A second commenter believed that the term should include short-term trading strategies that could occur over, for example, a two-day period. Another commenter suggested that the definition include any offer and sale of the same security if the offer and sale are accomplished prior to settlement.

In contrast, one commenter emphasized its belief that the long-standing historical definition of a day trader requires a pattern of day trades, noting that there are legitimate reasons to buy and sell a single security in a single day that are not premised on a day-trading strategy. This commenter suggested that the proposal apply only when a clearly defined and easily identified pattern of activity exists over a considerable period of time. Another commenter expressed a general view that the definition of day trading lacked sufficient clarity, and raised a series of questions regarding the scope of the term, including whether it should include the transmission of orders in a non-electronic environment.

In light of the comments, NASD Regulation has revised the proposed definition of ''day-trading strategy'' to mean ''an overall trading strategy characterized by the regular transmission by a customer of intra-day orders to effect both purchase and sale transactions in the same security or securities.'' NASD Regulation believes that the revised definition would include those instances where an individual regularly transmits one or more purchase and sale (*i.e.*, ''round-trip'') transactions in a single day. In addition, although as a practical matter, day trading typically requires electronic delivery of orders, the proposed definition of ''day-trading strategy'' has been revised to include orders transmitted by non-electronic means, such as by telephone.

Requirement To Provide Day-Trading Risk Disclosure Statement

As discussed above, the proposed rule change would require a firm that is promoting a day-trading strategy to deliver a disclosure statement to the customer discussing the unique risks posed by day trading. The disclosure statement would include several factors that a customer should consider before engaging in day trading, including that the customer should be prepared to lose all of the funds that he or she uses for day trading and that day trading on margin may result in losses beyond the initial investment. The firm would be permitted to develop an alternative risk disclosure statement, provided that the alternative statement was substantially similar to the mandated statement and was filed with, and approved by, NASD Regulation's Advertising Department.

Many commenters agreed that customers should receive additional information on the risks of day trading or other on-line trading activities. One commenter suggested that firms be required to provide a risk disclosure statement to all new individual customers, rather than limit dissemination to individuals to whom firms have recommended a day-trading strategy. In contrast, another commenter believed that it was more effective for the NASD to provide risk disclosures to potential customers in an educational atmosphere, such as the NASD's Web site. Some commenters suggested specific revisions to the proposed risk disclosure statement. In this regard, one commenter proposed that the statement include the language from the text of the Notice that day trading generally would not be appropriate for someone of limited resources and limited investment or trading experience and low risk tolerance. Another commenter expressed concern that the suggestion in the disclosure statement that persons inquire as to a firm's capacity to permit customers to engage in day trading might place an unrealistic obligation on the customer.

Comments generally were divided as to whether customers should be required to acknowledge receipt of the disclosure statement. One commenter believed that a firm should be able to provide a copy of the statement on its Web site or in an initial mailing to the customer at the time of account opening. The commenter stated that the document was a disclosure of risks and not an agreement between the parties. Another commenter asserted that firms should have flexibility in deciding whether to require a customer to sign the statement. In contrast, one commenter emphasized that requiring customers to acknowledge receipt of the statement would protect both the customer and the firm. In addition, one individual suggested that the proposed rules require customers to sign the statement and to wait three days prior to trading to allow for additional reflection and consideration.

After considering the comments, NASD Regulation has modified the proposed rule change to require firms promoting a day-trading strategy to deliver the risk disclosure statement to all non-institutional customers prior to opening an account for such customers. NASD Regulation is not recommending that all firms be required to disseminate the disclosure statement to all new customers because the benefits of such a requirement are unclear. However, NASD Regulation will continue to monitor the growth of day-trading activities to determine whether, in the future, such a requirement might be justified. In addition, NASD Regulation encourages all firms, particularly firms that provide on-line trading capability, to provide the mandated risk disclosure statement or a substantially similar disclosure statement to their customers.

The disclosure statement also has been revised to include the additional key point that day trading generally is not appropriate for persons of limited resources and limited investment or trading experience and low risk tolerance. The provision in the proposed statement that an individual should confirm that a firm has adequate capacity to support day-trading activities has been deleted, in light of concerns that the provision might place undue burdens on the customer.

Comments Suggesting No or Minimal Regulatory Response

Those commenters that opposed any action in the area of day trading generally questioned why day-trading activities merited special regulation. For example, two commenters emphasized that many investments were risky and generally believed that the proposed rules inappropriately targeted day-trading firms. Some commenters also suggested that the proposed rules were paternalistic. Another commenter raised concerns that the proposal unfairly suggested to investors that on-line trading is somehow less scrupulous and more risky than trading through a traditional broker-dealer. This commenter also believed that the existing regulatory framework provides ample means to combat abuses associated with day trading. In addition, one commenter generally stated that it was premature to attempt regulation of day-trading practices. Several individual commenters, in opposing regulation of day trading, emphasized the benefits of electronic trading and their ability to protect themselves.

As noted above, however, NASD Regulation believes that the proposed rule change focuses on the promotion of trading strategies that present very high risk to individuals and, as revised, should be easier for firms to apply to their activities. Firms that are actively promoting a day-trading strategy should be responsible for assessing whether the strategy is appropriate for an individual who opens a day-trading account at that firm. These firms also should be required to disclose the risks of engaging in a day-trading strategy to an individual prior to opening an account for that individual.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act [3] in that the proposed rule change is 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 Regulation believes that the proposed rule change codifying the obligation of firms promoting day-trading strategies to disclose the risk of these strategies to non-institutional customers and to determine whether the strategy is appropriate for a customer will help to protect investors and the public interest in an increasingly more sophisticated trading environment.

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

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in NASD Special Notice to Members 99–32 (April 15, 1999). The comment period expired on May 31, 1999. Thirty-nine comment letters were received in response to the Notice. Copies of the comment letters and a brief summary of the comment letters have been provided to the Commission. Of the 39 comment letters received, approximately 13 were in favor of the proposed rule change, 8 supported risk disclosure only, 12 were opposed to the proposed rule change, and 6 expressed no opinion or addressed broader issues.

[3] 15 U.S.C. 78o–3(b)(6).

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. In addition, the Commission seeks comment on the following specific issues: (1) whether the proposal should cover existing day-trading accounts; (2) whether the proposed definition of ''day-trading strategy'' is appropriate; (3) whether the proposed risk disclosure statement is adequate; and (4) whether the firm should be required to obtain a customer's acknowledgment of receipt of the risk disclosure document.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. 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–99–41 and should be submitted by October 12, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–24493 Filed 9–20–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41871; File No. SR–NYSE–99–32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending Exchange Rule 22(b) Regarding Board and Committee Member Disqualifications

September 13, 1999.

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 July 9, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The amendment to Exchange Rule 22(b) codifies the interpretation of the Exchange of the circumstances under which Board and committee members and other persons are obliged to disqualify themselves from participating in matters in which they have a personal interest. The present rule states that no person shall participate in the ''adjudication'' of any matter in which they are personally interested. The proposed amendment to Exchange Rule 22(b) bars participation in the ''consideration, review or adjudication'' of any matter in which a person is personally interested.

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.