

requested by a regulator or ordered by a court or arbitrator.

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

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

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

Written comments were neither solicited nor received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NASD consents, the Commission will:

(A) by order approve the 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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2003-85 and should be submitted by July 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-16712 Filed 7-1-03; 8:45 am]

BILLING CODE 8010-01-P

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-48093; File No. SR-NASD-2003-92]

#### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Adopt NASD Rule 2370 To Govern Certain Lending Arrangements Between Registered Persons and Customers**

June 26, 2003.

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 June 11, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NASD proposes to adopt NASD Rule 2370 to govern lending arrangements between registered persons and customers. The text of the proposed rule change appears below. New text is in italics.

\* \* \* \* \*

#### *2370. Borrowing From or Lending to Customers*

*(a) No person associated with a member in any registered capacity may borrow money from or lend money to any customer of the member unless: (1) The member has written procedures allowing the borrowing and lending of money between such registered persons and customers of the member; (2) the lending or borrowing arrangement meets one of the following conditions: (A) the customer is a member of such person's immediate family; (B) the customer is a financial institution regularly engaged*

*in the business of providing credit, financing, or loans, or other entity or person that regularly arranges or extends credit in the ordinary course of business; (C) the customer and the registered person are both registered persons of the same member firm; (D) the lending arrangement is based on a personal relationship with the customer, such that the loan would not have been solicited, offered, or given had the customer and the associated person not maintained a relationship outside of the broker/customer relationship; or (E) the lending arrangement is based on a business relationship outside of the broker-customer relationship; and (3) the member has pre-approved in writing the lending or borrowing arrangement.*

*(b) The term immediate family shall include parents, grandparents, mother-in-law or father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, son-in law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, or niece or nephew, and shall also include any other person whom the registered person supports, directly or indirectly, to a material extent.*

\* \* \* \* \*

#### **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**

The purpose of the proposed rule change is to prohibit registered persons from borrowing money from or lending money to a customer unless the member has written procedures allowing such lending arrangements consistent with the rule, the loan falls within one of five permissible types of lending arrangements, and the member pre-approves the loan in writing. The five types of permissible lending arrangements are: The customer is a member of the registered person's immediate family (as defined in the proposed rule); the customer is in the business of lending money; the

<sup>19</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

customer and the registered person are both registered persons of the same firm; the lending arrangement is based on a personal relationship outside of the broker-customer relationship; or the lending arrangement is based on a business relationship outside of the broker-customer relationship.

NASD believes that the solicitation of loans from customers by registered persons is an area of legitimate NASD interest because of the potential for misconduct. NASD has brought disciplinary action against registered persons who have violated just and equitable principles of trade by taking unfair advantage of their customers by inducing them to lend money in disregard of the customers' best interests, or by borrowing funds from, but not repaying, customers. The potential for misconduct also exists when a registered person lends money to a customer.

The proposed rule change establishes a regulatory framework that would give members greater control over, and more specific supervisory responsibilities for, lending arrangements between registered persons and their customers. Members could choose to permit their registered persons to borrow from or lend to customers consistent with the requirements of the rule or prohibit the practice in whole or in part. If members choose to permit their registered persons to engage in lending arrangements with customers, the proposed rule change would require members to have written procedures in place to monitor such lending arrangements. The notice and approval requirements of the proposed change would enhance members' ability to supervise the activities of registered personnel. Members would be able to evaluate, before granting approval, whether the lending arrangement falls within one of the five types of permissible arrangements. Members would be permitted to approve loans only if the loan falls within one of the five types of permissible lending arrangements. In addition, the notice requirement would place an affirmative obligation on registered persons that could be separately charged in a disciplinary action if not followed.

The proposed rule change also would enhance NASD's ability to monitor loans between registered persons and their customers. Currently, under controlling Commission decisions, to bring a disciplinary action against a registered person who has entered into an unethical lending arrangement with a customer, NASD generally must prove that the arrangement is inconsistent with just and equitable principles of

trade under NASD Rule 2110 because the registered person has acted in bad faith or unethically. This can be difficult to prove in cases in which the customer is unable or unavailable to testify, or refuses to testify because he or she is relying on the registered person for financial advice. The proposed rule change would better enable NASD to monitor such loans, since members would be required to maintain written records of the loans as evidence of compliance. NASD also believes that the proposed rule change would be an effective deterrent to potential misconduct because members would require their registered persons to give prior notice of the loan and get approval from the member before engaging in the transaction, and the lending arrangement must fall within one of the five types of permissible arrangements. Members that do not wish to engage in this review and approval process could prohibit the practice altogether.

It is important to note that this proposal does not change the application of Regulation T<sup>3</sup> to lending activities by associated persons. Specifically, the definition of "creditor" under Regulation T extends to associated persons of broker/dealers and therefore, certain loans to customers by associated persons may require compliance with the provisions of Regulation T.<sup>4</sup>

#### (2) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,<sup>5</sup> 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 change is designed to accomplish these ends by establishing a regulatory framework that will give members greater control over lending arrangements by permitting members to prohibit such arrangements altogether or, in the alternative, permit such arrangements only if they fall within one of five types of permissible arrangements. Members that permit such arrangements would be required to keep written procedures. Providing the member permits such loans, registered persons would be required to give their firms prior notice of the loan, and the member will be required to pre-approve the loan in writing. These procedures

would enable both members and NASD to proscribe customer-broker loans and monitor those that have been approved.

#### *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.

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

Written comments were neither solicited nor received for this rule proposal. Previously, in NASD Notice to Members 94-93 (December 1994), NASD requested comment on a more limited proposal regarding the adoption of a rule that would require registered persons to provide prior notification to, and obtain prior approval from, their employing member firm when personally borrowing funds or securities from customers. NASD has not included a discussion of the comments received on that proposal because the current rule proposal differs significantly in that it specifies the permissible types of lending arrangements and requires members to have written procedures that permit only those lending arrangements consistent with the rule.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the NASD consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

<sup>3</sup> 12 CFR 220.

<sup>4</sup> 12 CFR 220.2.

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

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 filings will also be available for inspection and copying at the principal office of the Association. All submissions should refer to File No. SR-NASD-2003-92 and should be submitted by July 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-16714 Filed 7-1-03; 8:45 am]

BILLING CODE 8010-01-P

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**AGENCY:** Small Business Administration.  
**ACTION:** Notice of reporting requirements submitted for OMB review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATES:** Submit comments on or before July 17, 2003. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83-1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

**ADDRESSES:** Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline White, Agency Clearance Officer, (202) 205-7044.

### SUPPLEMENTARY INFORMATION:

*Title:* Disaster Home/Business Loan Inquiry Record.

*No.:* 700.

*Frequency:* On Occasion.

*Description of Respondents:* Disaster Victim's.

*Responses:* 42,196.

*Annual Burden:* 10,549.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

[FR Doc. 03-16696 Filed 7-1-03; 8:45 am]

BILLING CODE 8025-01-P

## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3516]

#### State of Arkansas

As a result of the President's major disaster declaration for Public Assistance on June 6, 2003, and subsequent amendments closing the incident period effective June 10 and adding Individual Assistance on June 20, 2003, I find that the following counties in the State of Arkansas constitute a disaster area due to damages caused by severe storms, tornadoes, and flooding that occurred on May 2, 2003 and continuing through June 10, 2003: Benton, Chicot, Cleburne, Columbia, Conway, Craighead, Cross, Crittenden, Faulkner, Fulton, Jackson, Lonoke, Nevada, Perry, Phillips, Poinsett, St. Francis, White, and Woodruff. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 19, 2003 and for economic injury until the close of business on March 22, 2004 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Arkansas, Ashley, Baxter, Carroll, Clark, Desha, Drew, Garland, Greene, Hempstead, Independence, Izard, Jefferson, Lafayette, Lawrence, Lee, Madison, Mississippi, Monroe, Ouachita, Pike, Pope, Prairie, Pulaski, Saline, Sharp, Stone, Union, Van Buren, Washington, and Yell in the State of Arkansas; Claiborne, East Carroll, Morehouse, Webster, and West Carroll in the State of Louisiana; Bolivar, Coahoma, De Soto, Issaquena, Tunica, and Washington in the State of Mississippi; Barry, Dunklin, Howell, McDonald, Oregon, and Ozark in the State of

Missouri; Adair and Delaware in the State of Oklahoma; and Shelby and Tipton in the State of Tennessee.

The interest rates are:

*For Physical Damage:*

Homeowners with credit available elsewhere—5.625%.

Homeowners without credit available elsewhere—2.812%.

Businesses with credit available elsewhere—5.906%.

Businesses and non-profit organizations without credit available elsewhere—2.953%.

Others (including non-profit organizations) with credit available elsewhere—5.500%.

*For Economic Injury:*

Businesses and small agricultural cooperatives without credit available elsewhere—2.953%.

The number assigned to this disaster for physical damage is 351611. For economic injury, the numbers are 9W0600 for Arkansas, 9W0700 for Louisiana, 9W0800 for Mississippi, 9W0900 for Missouri, 9W1000 for Oklahoma, and 9W1100 for Tennessee.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 25, 2003.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 03-16698 Filed 7-1-03; 8:45 am]

BILLING CODE 8025-01-P

## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3512]

#### State of West Virginia; Amendment # 1

In accordance with the notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective June 21, 2003, the above numbered declaration is hereby amended to include Cabell, Mingo, and McDowell Counties in the State of West Virginia as a disaster area due to damages caused by severe storms, flooding, and landslides that occurred June 11, 2003 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Pike in the Commonwealth of Kentucky, and Buchanan, Mercer, and Tazewell counties in the Commonwealth of Virginia may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

The number for economic injury for the Commonwealth of Virginia is 9W13.

All other information remains the same, *i.e.*, the deadline for filing

<sup>6</sup> 17 CFR 200.30-3(a)(12).