

V. Solicitation of Comments on Amendment No. 3

Interested persons are invited to submit written data, views, and arguments on Amendment No. 3, including whether the amendment 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. Comments also may be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comments should refer to File No. SR-NASD-2003-44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 Nasdaq. All submissions should refer to File No. SR-NASD-2003-44 and should be submitted by January 21, 2004.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,³⁸ that the proposed rule change (SR-NASD-2003-44) and Amendment Nos. 1 and 2 are approved, and that Amendment No. 3 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁹

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03-32171 Filed 12-30-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48969; File No. SR-NASD-2003-07]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend Rules 1011, 1014 and 1017

December 22, 2003.

On January 17, 2003, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NASD Rules 1011, 1014 and 1017. On September 17, 2003, NASD filed Amendment No. 1 to the proposed rule change.³ On October 16, 2003, NASD filed Amendment No. 2 to the proposed rule change.⁴ Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on October 23, 2003.⁵ No comments were received on the proposed rule change. This order approves the proposed rule change.

In brief, NASD would amend certain of its rules that govern applications for NASD membership and applications for approval of changes in business structure by NASD members. Currently, NASD Rule 1014 delineates certain factors, such as pending or past regulatory actions, that NASD may consider in assessing an applicant's ability to comply with applicable law and regulations, NASD rules, and just and equitable principles of trade. Furthermore, Rule 1017 requires existing NASD members to apply to NASD for approval of continued membership in the event of certain changes to their ownership, control or business operations. In reviewing such applications, NASD staff also considers the factors listed in Rule 1014. NASD asserts that it has proposed these changes in order to strengthen its ability to protect investors with pending claims, awards or judgments against NASD members, and to otherwise detect and prevent misconduct.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Kosha K. Dalal, Assistant General Counsel, NASD, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated September 16, 2003.

⁴ See letter from Kosha K. Dalal, Assistant General Counsel, NASD, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated October 15, 2003.

⁵ See Securities Exchange Act Release No. 48651 (October 17, 2003), 68 FR 60750 ("Notice").

Accordingly, NASD would modify Rule 1017(a)(3) regarding when a member must request approval of a disposition of assets. The rule currently requires an NASD member to file an application for an "acquisition of substantially all of the member's assets, unless the acquiring member is a member of the New York Stock Exchange, Inc. [NYSE]." NASD would amend Rule 1017(a)(3) in three ways. First, it would add that transfers of a firm's assets, and not only acquisitions, would require approval. Second, NASD would require approval of a transfer unless *both* parties to the transaction, and not just the acquiring party, are members of the NYSE. Third, NASD would change the amount of a transfer that requires a request for approval from "substantially all" of the member's assets to "25% or more in the aggregate of the member's assets or any asset, business or line of operation that generates revenues comprising 25% or more in the aggregate of the member's earnings measured on a rolling 36-month basis."

NASD would also modify the factors listed in Rule 1014 that it considers in reviewing applications for membership and continued membership by adding pending arbitrations or civil actions against the applicant, as well as unpaid arbitration awards, or other adjudicated customer awards against the applicant and other persons who may have significant control or influence over the applicant. Such other persons would include the applicant's controlling persons, principals, registered representatives, other Associated Persons, any lender of 5% or more of the applicant's net capital, and any other member with respect to which these persons were a controlling person or a 5% lender of the applicant's net capital.

In addition, NASD's proposal would provide for a rebuttable presumption that an application for membership or continued membership should be denied when an analysis of the applicant's history reveals any one of the negative events enumerated in Rule 1014(a)(3)(A), (C), (D) and (E).⁶ An applicant could overcome this presumption by demonstrating that it could nevertheless meet NASD's membership standards.

Finally, for purposes of its rules governing the above-described application processes, NASD would amend its definition of "Associated Person." The term, as defined in Rule 1011(b), would be amended to bring

⁶ See Notice, 68 FR at 60751.

³⁸ *Id.*

³⁹ 17 CFR 200.30-3(a)(12).

non-natural controlling persons within the scope of its coverage.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁷ Specifically, the Commission finds that the proposal is consistent with section 15A(b)(6) of the Act,⁸ which requires, among other things, that NASD's rules 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. The Commission believes that the amendments should improve NASD's ability to ensure that its membership is not likely to engage in conduct that may be harmful to public investors.

The Commission believes that NASD's proposed changes to Rule 1017 are proper. First, the adoption of a defined quantitative measure of the amount of assets transferred that will require an application for approval should provide a greater degree of clarity to NASD members such that they may more readily anticipate when it will be necessary to file an application. The Commission also notes that the changes to Rule 1017 should result in its application to a broader range of transactions, in that applications for approval will now be required for any form of asset transfer, and not only acquisitions, and will be required except where both parties are members of the NYSE. This should enhance the NASD's ability to ensure that such transactions do not result in a member or its owners insulating itself or themselves from the responsibility to pay existing or potential customer claims.

The Commission believes that NASD's codification of a rebuttable presumption to deny an application for membership or continued membership where the applicant's history reflects any of the negative events specified in Rule 1014(a)(3)(A) and (C) through (E) is also proper. The Commission notes that this presumption should provide additional guidance to applicants as to how such events will be assessed in considering an applicant's ability to comply with NASD's membership standards. Moreover, the change should serve to provide notice to potential applicants of the consequences of

misconduct, and thereby discourage it. The Commission also notes that the presumption may be overcome if the applicant can demonstrate that it is otherwise capable of meeting NASD's membership standards. The Commission believes that, because NASD is a member organization charged with the protection of investors and the public interest, it is fair to require applicants to show why membership should be granted, notwithstanding any prior history of misconduct.

As a further measure to encourage compliance with arbitration or other awards, and to deny entry to those who disregard them, NASD has proposed to amend Rule 1014(a)(3) to add pending arbitrations or civil actions to the list of factors considered in deciding whether to grant membership or continued membership. Further, NASD would add the existence of unpaid arbitration awards or settlements, or other adjudicated customer awards, to the factors listed in Rule 1014(a)(3) that would trigger the presumption against granting approval of membership or continued membership. NASD would consider this factor not only in reviewing the member's application, but also in reviewing its control persons and other persons who, by virtue of other arrangements or capital structure, exercise control over the applicant. The Commission believes that these changes are appropriate because such matters may demonstrate an applicant's ability or willingness to comply with the Act, the regulations of the Commission and the rules of NASD. Moreover, the new provisions should provide incentive to NASD members, potential NASD members, and persons that control NASD members to comply with arbitration or other awards.

Finally, the Commission believes that NASD's expansion of the definition of "Associated Person," for purposes of its membership rules, to include non-natural persons is proper. The Commission believes the inclusion of such persons should permit NASD to examine a broader range of entities that potentially control an applicant, and thereby ensure that its ability to assess the applicant and the applicant's business history are not unnecessarily restricted.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change (File No. SR-NASD-2003-07) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03-32179 Filed 12-30-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48986; File No. SR-NASD-2003-183]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Proposed Amendments to Rule 1120 Regarding Regulatory Element Contact Person

December 23, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 9, 2003, the National Association of Securities Dealers, Inc. ("NASD"), 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

The NASD is proposing to amend Rule 1120 to require that each member designate and identify to NASD the individual(s) who will receive Web Central Registration Depository ("CRD") continuing education ("CE") Regulatory Element e-mails. The proposed rule change further would require that each member quarterly review and update the CE contact person(s) information. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

1120. Continuing Education Requirements

This Rule prescribes requirements regarding the continuing education of certain registered persons subsequent to their initial qualification and registration with NASD [the Association]. The requirements shall

⁷ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78o-3(b)(6).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.