

The options exchanges have agreed to adopt a *de minimus* exception to the 80/20 Test. As proposed by the Exchange, the 80/20 Test would not apply to any market maker that has total volume of less than 1000 contracts in an option during a calendar quarter. At this low volume, even a small number of Principal Orders could result in the market maker being disqualified from Linkage in that class for a calendar quarter. The Exchange believes that this proposed exception would address such concerns.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>5</sup> in general and furthers the objectives of Section 6(b)(5)<sup>6</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange further believes that the proposed rule change will conform the ISE's rules to the Linkage Plan and provide market makers with greater access to the Linkage.

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

The ISE does not believe that the proposed rule change will impose any burden on competition.

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

No written comments were solicited or received with respect to the proposed rule change.

## 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 Exchange 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 at <http://www.sec.gov/rules/sro.shtml> or send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-ISE-2005-23 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File No. SR-ISE-2005-23. 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 in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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 File Number SR-ISE-2005-23 and should be submitted on or before August 16, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52059; File No. SR-NASD-2005-58]

### **Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Relating to the Reporting of Data to Clearing Firms by Correspondent Firms**

July 19, 2005.

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 May 2, 2005, 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 NASD. On July 14, 2005, NASD filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, 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 Rule 3150 and Rule 3230 governing the reporting of data to clearing firms by correspondent firms. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in *brackets*.

\* \* \* \* \*

#### **3150. Reporting Requirements for Clearing Firms**

(a) No change.  
(b) *Each member that is a clearing firm is required to report prescribed data to NASD under this Rule in such a manner as to enable NASD to distinguish between data pertaining to all proprietary and customer accounts of an introducing member and data pertaining to all proprietary and customer accounts of any member for which the introducing member is acting as an intermediary in obtaining clearing services from a clearing firm. The reporting requirements of this paragraph (b) shall apply to the*

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

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

<sup>3</sup> Amendment No. 1, which replaced and superseded the original filing in its entirety, clarifies which piggybacking arrangements will be subject to the rule and modifies certain rule language to conform with other terms used in NASD rules.

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

proprietary and customer accounts of members that have established an intermediary clearing arrangement with an introducing member on or after [insert effective date of this paragraph (b)].

[(b)](c) Pursuant to the Rule 9600 Series, NASD may in exceptional and unusual circumstances, taking into consideration all relevant factors, exempt a member or class of members unconditionally or on specified terms from any or all of the provisions of this Rule that it deems appropriate.

\* \* \* \* \*

### 3230. Clearing Agreements

(a) through (g) No change.

(h) All clearing agreements shall require each introducing member to maintain its proprietary and customer accounts and the proprietary and customer accounts of any member for which it is acting as an intermediary in obtaining clearing services from the clearing firm in such a manner as to enable the clearing firm and NASD to identify data belonging to the proprietary and customer accounts of each member. The requirements of this paragraph (h) shall apply to intermediary clearing arrangements between a member and an introducing member that are established on or after [insert effective date of this paragraph (h)].

\* \* \* \* \*

## 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

By way of background, some NASD members choose not to contract for clearing services directly with a clearing firm. The reasons vary. For example, the member may not do a sufficient business to satisfy clearing firm financial and other requirements to support a separate clearing agreement. In such cases, a member may contract

for clearing services with an introducing, or intermediary, firm that, in turn, contracts directly with a clearing firm for clearing services. Members that contract for clearing services with an introducing firm are often referred to as "piggybacking" firms, or "piggybackers." Under this arrangement, only the introducing firm has a contractual arrangement with the clearing firm, which clears for both the introducing firm and the introducing firm's piggybacking firms. Under current practice, the intermediary firm may assign account numbers to the piggybacker's accounts (both proprietary and customer accounts) that do not identify them to the clearing firm as belonging to a piggybacking firm. For example, the introducing firm may assign account numbers that identify these accounts as branch offices of the introducing firm.

Although these piggybacking arrangements may satisfy the business needs of the parties—the clearing firm, the introducing firm, and the piggybacking firm—they impede NASD regulatory programs and may cause problems for the clearing firm. For example, under Rule 3150, clearing firms are required to report certain data to NASD for purposes of the surveillance component of its National Examination Program ("NEP"). In fulfilling its reporting obligation under Rule 3150, a clearing firm whose clients include introducing firms that have contracted with piggybackers may be reporting the combined data of the introducing firm and its piggybackers as only belonging to the introducing firm. In such cases, NASD staff is not able to distinguish between data belonging to the introducing firm and data belonging to the piggybacking firm(s) for purposes of conducting surveillance.

This inability to separate out the data can, and already has, become a serious issue where the intermediary firm goes into SIPC ("Securities Investor Protection Corporation") liquidation. If the data from the intermediary and piggybacking firms are not distinguishable, the clearing firm will be unable to facilitate the orderly transfer of accounts without doing time-intensive research and creating a special program to separate accounts belonging to the introducing firm and its piggybacker(s).

To resolve these issues, NASD is proposing to adopt amendments to Rule 3150 (governing reporting requirements for clearing firms) and Rule 3230 (governing clearing agreements) that would permit regulators and clearing firms to distinguish between data belonging to an introducing firm and

data belonging to its piggybacker(s). The proposed amendments to Rule 3150 would require clearing firms to report data to NASD about each piggybacking firm separately from the introducing firm's data. The proposed requirements would apply to the data pertaining to the proprietary and customer accounts of piggybacking firms only if the piggybacking relationship with the introducing firm was established on or after the effective date of this proposed rule change.

The proposed amendments to Rule 3230 would require introducing firms to maintain data in such a way as to enable NASD and the clearing firm to be able to identify the data pertaining to the proprietary and customer accounts of the introducing firm and the data pertaining to the proprietary and customer accounts of any piggybacking firm. These proposed rule changes will enable NASD staff to surveil data reported by piggybacking firms as part of its NEP Surveillance program and facilitate any future SIPC liquidations. The requirements of the proposed rule change would apply only to the data belonging to the proprietary and customer accounts of any piggybacking firm only if the piggybacking relationship was established on or after the effective date of the proposed rule change.<sup>4</sup>

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. NASD is proposing an effective date of 180 days following Commission approval. This will give members time to make necessary changes to their systems.

#### 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which

<sup>4</sup> NASD understands that requiring firms to convert existing accounts would potentially burden customers as the clearing firm may need to issue new account numbers and, as applicable, new debit cards, checking accounts, and passwords issued in connection with the accounts. Accordingly, the piggybacking firms would have to advise these customers in writing that they would be getting new account numbers, and why, and would need to change their records to reflect new customer account numbers. Further, NASD understands that some clearing firms would have to convert such existing accounts to accounts under the customers' names manually, entry by entry. Other data, such as cost basis information, also might have to be manually transferred to the new accounts. Accordingly, while NASD recognizes that there is some risk in not being able to surveil data belonging to accounts held by firms who are currently in piggybacking clearing relationships, it does not believe that the regulatory benefit in requiring such conversion would outweigh the expense and inconvenience to customers and firms.

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 designed to accomplish these ends by giving regulators and clearing firms the ability to determine whether data being reported to clearing firms belongs to an introducing firm or a piggybacking firm. The proposed rule change will enable NASD staff to more clearly identify data being reported to NASD for purposes of NASD's NEP Surveillance and, in those instances where an introducing firm enters a SIPC liquidation, will help to facilitate an orderly liquidation.

#### *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*

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 the Exchange consents, the Commission will:

- (A) By order approve such proposed rule change, as amended, 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](mailto:rule-comments@sec.gov). Please include File

Number SR-NASD-2005-58 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-58. 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 in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. Copies of such filing also 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 File Number SR-NASD-2005-58 and should be submitted on or before August 16, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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**BILLING CODE 8010-01-P**

### **SELECTIVE SERVICE SYSTEM**

#### **Forms Submitted to the Office of Management and Budget for Extension of Clearance**

**AGENCY:** Selective Service System.

**ACTION:** Notice.

I. The following forms have been submitted to the Office of Management and Budget (OMB) for extension of

clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

#### **SSS-2, 3A&B, 3C**

*Title:* The Selective Service System Change of Information, Correction/Change Form and Registration Status Forms.

*Purpose:* To insure the accuracy and completeness of the Selective Service System registration data.

*Respondents:* Registrants are required to report changes to corrections in data submitted in SSS Form 1.

*Frequency:* When changes in a registrant's name or address occur.

*Burden:* The reporting burden is two minutes or less per report.

#### **SSS-402**

*Title:* Uncompensated Registrar Appointment.

*Purpose:* Is used to verify the official status of applicants for the position of Uncompensated Registrars and to establish authority for those appointed to perform as Selective Service System Registrars.

*Respondents:* United States citizens over the age of 18.

*Frequency:* One-time.

*Burden:* The reporting burden is three minutes or less.

II. The following forms, to be used only in the event that inductions into the armed services are resumed, have been submitted to the Office of Management and Budget (OMB) for the extension of clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

#### **SSS-9**

*Title:* Registrant Claim Form.

*Purpose:* Form is used to submit a claim for postponement or induction or reclassification.

*Respondents:* Registrants filing claims for either postponement or reclassification.

*Frequency:* One-time.

*Burden:* The reporting burden is five minutes or less per individual.

#### **SSS-21**

*Title:* Claim Documentation Form—Administrative.

*Purpose:* Is used to document those claims for reclassification which can be approved by an Area Office upon the presentation of documentary proof.

*Respondents:* Registrants whose past or present status is reason for reclassification.

*Frequency:* One-time.

*Burden:* The reporting burden is ten minutes or less per individual.

<sup>5</sup> 17 CFR 200.30-3(a)(12).