

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, 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 may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NASD-2002-168. 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, 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 the NASD. All submissions should refer to File No. SR-NASD-2002-168 and should be submitted by January 14, 2004.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,³⁶ that the proposed rule change (SR-NASD-2002-168), as modified by Amendment No. 1, be, and it hereby is, approved, and that Amendment No. 2 be, and hereby is, approved on an accelerated basis. As discussed above, the NASD will announce the effective date of this proposed rule change through a NtM to be circulated as soon as possible after the publication of this approval order in the **Federal Register**.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48930; File No. SR-NASD-2003-177]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Technical Amendments to Interpretive Material 3130

December 16, 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 2, 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 NASD. NASD has designated the proposed rule change as "non-controversial" under section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NASD is proposing to amend NASD IM-3130. The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

IM-3130. Restrictions on a Member's Activity

(a) This explanation outlines and discusses some of the financial and operational deficiencies which could initiate action under Rule 3130. Paragraphs [(b)](c)(2) and [(c)](d)(2) of Rules 3130 and 3131 recognize that there are various unstated financial and operational reasons for which [the Association] NASD may impose restrictions on a member so as to prohibit its expansion or to require a reduction in overall level of business. These provisions are deemed necessary in order to provide for the variety of situations and practices which do arise and which, if allowed to persist, could

result in increased exposure to customers and to broker/dealers.

(b) In the opinion of the Board of Governors, it would be impractical and unwise to attempt to identify and list all of the situations and practices [which] that might lead to the imposition of restrictions or the types of remedial actions [the Association] NASD may direct be taken because they are numerous and cannot be totally identified or specified with any degree of precision. The Board believes, however, that it would be helpful to members' understanding to list some of the other bases upon which [the Association] NASD may conclude that a member is in or approaching financial difficulty.

(c) For purposes of paragraphs [(b)](c)(2) and [(c)](d)(2) of Rule 3130, a member may be considered to be in or approaching financial or operational difficulty in conducting its operations and therefore subject to restrictions if it is determined by [the Association] NASD that any of the parameters specified therein are exceeded or one or more of the following conditions exist:

(1) through (8) No change

(d) For purposes of paragraphs [(b)](c)(2) and [(c)](d)(2) of Rule 3131, a member may be considered to be in or approaching financial or operational difficulty in conducting its operations and therefore subject to restrictions if it is determined by [the Association] NASD that any of the parameters specified therein are exceeded or one or more of the following conditions exist:

(1) No change

(2) The member has experienced a substantial change in the manner in which it processes its business which, in [the] NASD's view, [of the Association,] increases the potential risk of loss to customers and members.

(3) through (8) No change

(e) If [the Association] NASD determines that any of the conditions specified in paragraphs (c) or (d) of this explanation exist, it may require that the member take appropriate action by effecting one or more of the following actions until such time as [the Association] NASD determines they are no longer required:

(1) through (12) No change

(13) Be subject to such other restrictions or take such other action as [the Association] NASD deems appropriate under the circumstances in the public interest and for the protection of members.

* * * * *

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

³⁶ 15 U.S.C. 78s(b)(2).

³⁷ 17 CFR 200.30-2(a)(12).

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 proposed rule change would: (i) change references to "paragraphs (b)(2) and (c)(2)" of NASD Rules 3030 and 3031 to "paragraphs (c)(2) and (d)(2)" in NASD IM-3130(a), (c), (d), and (e); and (ii) change references to "the Association" to "NASD" in NASD IM-3130, thereby conforming the rule language in NASD IM-3130 to the rule language in Rules 3130 and 3131, as recently amended.⁵

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A of the Act,⁶ in general, and with section 15A(b)(6) of the Act,⁷ in particular, 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. NASD believes that conforming the references in NASD IM-3130 to renumbered paragraphs in recently amended NASD Rules 3130 and 3131 and changing references to "the Association" to "NASD" would be consistent with the protection of investors and the public interest.

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

NASD does not believe that the proposed rule change would 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

Because the foregoing proposed rule change does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and
- (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

NASD has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposed rule change corrects references to recently amended rules, which should preserve the accuracy of NASD's rules. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹⁰

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.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6). The Commission notes that NASD provided written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change.

¹⁰ For purposes only of accelerating the operative date of the proposed rule change the Commission considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NASD-2003-177. 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 the NASD. All submissions should refer to File No. SR-NASD-2003-177 and should be submitted by January 14, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48932; File No. SR-NASD-2003-186]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Administration of Qualification Examinations on Security Futures

December 16, 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 11, 2003, the National Association of Securities Dealers, Inc. ("NASD") submitted to 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 NASD has filed the proposed rule

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4

⁵ See Securities Exchange Act Release No. 48438 (September 4, 2003), 68 FR 53766 (September 12, 2003) (SR-NASD-2003-74).

⁶ 15 U.S.C. 78o-3.

⁷ 15 U.S.C. 78o-3(b)(6).