railroad service (under certain conditions, military service may be credited as months of railroad service). Accelerated benefits are unemployment or sickness benefits that are payable to a railroad employee before the regular July 1 beginning date of a benefit year if an employee has 10 or more years of service and is *not* qualified for benefits in the current benefit year.

During the RUIA claims review process, the RRB may determine that unemployment or sickness benefits cannot be awarded because RRB records show insufficient qualifying service and/or compensation. When this occurs, the RRB allows the claimant the opportunity to provide additional information if they believe that the RRB service and compensation records are incorrect.

Depending on the circumstances, the RRB provides the following form(s) to obtain information needed to determine if a claimant has sufficient service or compensation to qualify for unemployment or sickness benefits. Form UI–9, Applicant's Statement of Employment and Wages, Form UI–23, Claimant's Statement of Service for Railroad Unemployment Insurance Benefits, Form UI–44, Claim for Credit for Military Service (RUIA), Form ID–4F, Advising of Ineligibility for RUIA Benefits, Form ID–4U, Advising of Service/Earnings Requirements for RUIA Benefits, Form ID–4X, Advising of Service/Earnings Requirements for Sickness Benefits, Form ID–4Y, Advising of Ineligibility for Sickness Benefits, Form ID–20–1, Advising that Normal Unemployment Benefits Are About to Be Exhausted, Form ID–20–2, Advising that Normal Sickness Benefits Are About to Be Exhausted, and Form ID–20–4, Advising That Normal Sickness Benefits Are About to Be Exhausted/Non-Entitlement. Completion of these forms is required to obtain or retain a benefit. One response is required of each respondent. The RRB proposes no changes to these forms.

The burden associated with the information collection is estimated as follows:

Form #	Annual responses	Completion time (minutes)	Burden hours
ID–5I	4,500	15	1,125
ID–5R(SUP)	900	10	150
ID–49R	250	15	63
UI–48	250	12	50
UI–9	800	10	133
UI–23	600	5	50
UI–44	150	5	13
ID–4F	25	5	2
ID–4U	150	5	13
ID–4X	100	5	8
ID–4Y	25	5	2
ID–20–1	50	5	4
ID–20–2	100	5	8
ID–20–4	5	5	1
Total	7,905	.....	1,622

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–23215 Filed 9–11–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48444; File No. SR–NASD–98–74]

Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 3 and 4 to a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to NASD Rule 3110(f) Governing Use of Predispute Arbitration Agreements With Customers

September 4, 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 August 22, 2003, the National Association of Securities Dealers, Inc. (''NASD''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') Amendment No. 4 to a proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. Notice of the proposal, as amended by Amendment Nos. 1 and 2, was published in the **Federal Register** on November 29, 1999.[3] The Commission received two comment letters on the proposal.[4] On April 30, 2002, NASD submitted a response to comments and Amendment No. 3 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended.

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

NASD proposes to amend NASD Rule 3110(f) to: require additional disclosure

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

[2] 17 CFR 240.19b-4.

[3] See Securities Exchange Act Release No. 42160 (November 19, 1999), 64 FR 66681.

[4] See letters from Barry D. Estell, dated December 15, 1999 (''Estell Letter''), and John J. Miller, dated December 27, 1999 (''Miller Letter'').

[5] See letter from Sarah J. Williams, Office of General Counsel, NASD Regulation, Inc., to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated April 30, 2002 (''Amendment No. 3''). In Amendment No. 3, NASD responded to comments and changed the effective date provision of the proposal.

in predispute arbitration agreements regarding the arbitration process, including possible limits on eligibility of claims; require member firms to provide certain information regarding arbitration and predispute arbitration agreements to customers upon request; and clarify the rule regarding use of choice of law provisions in predispute arbitration agreements. In Amendment No. 4, NASD proposes to change the effective date of the proposed rule change to be 90 days following publication of a Notice to Members announcing approval by the Commission of the proposed rule change; NASD will issue such Notice to Members within 60 days of Commission approval. Below is the text of the proposed rule change. Proposed new language is *in italics;* proposed deletions are in brackets.

* * * * *

Rules of the Association

3000. Responsibilities Relating to Associated Persons, Employers, and Others' Employees

3110. Books and Records

(f) Requirements When Using Predispute Arbitration Agreements [With] *for* Customer *Accounts*

(1) Any predispute arbitration agreement clause shall be highlighted and shall be immediately preceded by the following [disclosure] language [(printed] in outline form [as set forth herein) which shall also be highlighted].

This agreement contains a predispute arbitration clause. By signing an arbitration agreement the parties agree as follows:

(A) [Arbitration is final and binding on the parties.] *All parties to this agreement are giving up the right to sue each other in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.*

(B) [The parties are waiving their right to seek remedies in court, including the right to a jury trial.] *Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.*

(C) [Pre-arbitration discovery is generally more limited than and different from court proceedings.] *The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.*

(D) [The arbitrators' award is not required to include factual findings or legal reasoning and any party's right to appeal or seek modification of rulings of the arbitrators is strictly limited.] *The arbitrators do not have to explain the reason(s) for their award.*

(E) The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

(F) The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.

(G) The rules of the arbitration forum in which the claim is filed, and any amendments thereto, shall be incorporated into this agreement.

(2)(A) [Immediately preceding the signature line,] *In any agreement containing a predispute arbitration agreement,* there shall be a *highlighted* statement immediately preceding any signature line or other place for indicating agreement [which shall be highlighted] that *states that* the agreement contains a predispute arbitration clause. The statement shall also indicate at what page and paragraph the arbitration clause is located.

(B) At the time of signing, a copy of the agreement containing any such clause shall be given to the customer who shall acknowledge receipt thereof on the agreement or on a separate document.

(3) [A copy of the agreement containing any such clause shall be given to the customer who shall acknowledge receipt thereof on the agreement or on a separate document.]

(A) A member shall provide a customer with a copy of any predispute arbitration clause or customer agreement executed between the customer and the member, or inform the customer that the member does not have a copy thereof, within ten business days of receipt of the customer's request.

(B) Upon request by a customer, a member shall provide the customer with the names of, and information on how to contact or obtain the rules of, all arbitration forums in which a claim may be filed under the agreement.

(4) [No agreement shall include any condition which limits or contradicts the rules of any self-regulatory organization or limits the ability of a party to file any claim in arbitration or limits the ability of the arbitrators to make any award.]

(A) No predispute arbitration agreement shall include any condition that:

(i) limits or contradicts the rules of any self-regulatory organization;

(ii) limits the ability of a party to file any claim in arbitration;

(iii) limits the ability of a party to file any claim in court permitted to be filed in court under the rules of the forums in which a claim may be filed under the agreement;

(iv) limits the ability of arbitrators to make any award.

(B) No member may seek to enforce any choice-of-law provision unless there is a significant contact or relationship between (i) the law selected and (ii) either the transaction at issue or one or more of the parties.

(5) [The requirements of subparagraphs (1) through (4) shall apply only to new agreements signed by an existing or new customer of a member after September 7, 1989.] *If a customer files a complaint in court against a member that contains claims that are subject to arbitration pursuant to a predispute arbitration agreement between the member and the customer, the member may seek to compel arbitration of the claims that are subject to arbitration. If the member seeks to compel arbitration of such claims, the member must agree to arbitrate all of the claims contained in the complaint if the customer so requests.*

(6) All agreements shall include a statement that ''No person shall bring a putative or certified class action to arbitration, nor seek to enforce any predispute arbitration agreement against any person who has initiated in court a putative class action; or who is a member of a putative class action who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) The class certification is denied; or (ii) the class is decertified; or (iii) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein.''

(7) [The requirements of subparagraph (6) shall apply only to new agreements signed by an existing or new customer of a member after October 28, 1993.] *The provisions of this Rule shall become effective on (effective date). The provisions of subparagraph (3) shall apply to all members as of the effective date of this Rule regardless of when the customer agreement in question was executed. Otherwise, agreements signed by a customer before (effective date) are subject to the provisions of this Rule in effect at the time the agreement was signed.*

(g)—(h) Unchanged.

* * * * *

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 threefold: to require additional disclosure in predispute arbitration agreements regarding the arbitration process, including possible limits on eligibility of claims; to require member firms to provide certain information regarding arbitration and predispute arbitration agreements to customers upon request; and to clarify the rule regarding use of choice-of-law provisions in predispute arbitration agreements.

Procedural History of Rule Filing

In 1997, NASD filed three separate rule filings with the Commission relating to predispute arbitration agreements. The first rule filing related to the eligibility of claims for arbitration, the second rule filing proposed a cap on punitive damages in arbitration disputes,[6] and the third, SR–NASD–98–74 (this rule filing) related to increased disclosure with respect to predispute arbitration agreements.[7] In July 1999, the effective date provisions of the three rule filings were linked to avoid the cost to firms, and the potential confusion to customers, of requiring multiple amendments to customer agreements in a relatively short period of time.

On November 19, 1999 the Commission published the proposed rule change for comment in the **Federal Register**.[8] This Notice incorporated Amendment Nos. 1 and 2 to the proposed rule change. The Commission received two comment letters on the proposed rule change.[9] On April 30, 2002, NASD submitted a Response to Comments and Amendment No. 3 to the proposed rule change.

NASD subsequently withdrew the Eligibility Rule Filing on December 17, 2002, and the Punitive Damages Rule Filing on May 9, 2003. As a result, NASD is proposing to revise the effective date of SR–NASD–98–74 so that the proposed rule change may proceed.

Background

The proposed rule change is intended to increase the disclosure required in predispute arbitration agreements. Many broker-dealers require that customers seeking to open accounts, particularly margin and option accounts or accounts with a checking or money market feature, agree in writing to arbitrate disputes concerning the account, typically in a self-regulatory organization (''SRO'') sponsored forum. These agreements, called ''predispute arbitration agreements,'' are generally part of the non-negotiated customer agreement drafted by the firm.

To ensure that customers are advised about what they are agreeing to when they sign predispute arbitration agreements, NASD Rule 3110(f) requires that such agreements contain highlighted disclosure about the differences between arbitration and litigation, including notice that by agreeing to arbitrate their disputes, customers may be waiving certain rights that would be available in court. Rule 3110(f) also requires that the agreement itself be highlighted, and that a copy of the agreement be given to the customer and acknowledged by the customer in writing.

Despite these precautions, investor representatives have expressed concern that many customers who sign predispute arbitration agreements still do not adequately understand what they are agreeing to. For example, some predispute arbitration agreements contain ''choice-of-law'' provisions that specify that the law of a certain state will govern disputes arising out of the agreement. In some cases, the member knows that the law of the chosen state may limit the ability of a customer to bring a claim or obtain an award, but the customer would not be aware of these restrictions from the face of the agreement. By signing an agreement that contained a choice-of-law provision, a customer might inadvertently waive certain rights and remedies. Customers' perceptions of unfairness are heightened by the fact that, when customers must sign predispute arbitration agreements in order to open accounts, their participation in SRO-sponsored arbitration may be involuntary.

Consequently, in its 1996 report, Securities Arbitration Reform: Report of the Arbitration Policy Task Force to the Board of Governors, National Association of Securities Dealers, Inc. (''Task Force Report''), the Arbitration Task Force, chaired by David Ruder (formerly Chairman of the SEC and a former NASD Board member), recommended that members be required to provide more disclosure about arbitration to customers who sign predispute arbitration agreements, and that the use of certain provisions that limit rights and remedies be restricted.

Proposed Amendments

Required Disclosure and Notice of Possible Restrictions on Eligibility

Currently, paragraph (f)(1) of Rule 3110 mandates certain disclosure language about the differences between litigation and arbitration that must be included in predispute arbitration agreements. The proposed amendments would simplify the language in some existing provisions and would add new provisions.

One of the most significant new provisions concerns notice of possible limits in some arbitration forums on the time for bringing claims. Paragraph (f)(1)(F) would require disclosure that the rules of some arbitration forums may impose time limits for bringing claims in arbitration, and that, in some cases, claims that are ineligible for arbitration may be brought in court. This provision is intended to give notice to customers of NASD Rule 10304 relating to eligibility of claims submitted to arbitration, as well as the rules in other forums.

[6] On June 24, 1997, NASD submitted a proposed rule change concerning the eligibility of claims for arbitration (''Eligibility Rule Filing''). *See* Securities Exchange Act Release No. 39487 (December 23, 1997), 63 FR 588 (January 6, 1998) (SR–NASD–97–44). On July 7, 1997, NASD submitted a proposal to cap punitive damages in arbitration disputes (''Punitive Damages Rule Filing''). *See* Securities Exchange Act Release No. 39371 (November 26, 1997), 62 FR 64428 (December 5, 1997) (SR–NASD–97–47). The Eligibility Rule Filing was withdrawn on December 17, 2002, and the Punitive Damages Rule Filing was withdrawn on May 9, 2003.

[7] This proposal, SR–NASD–98–74, was initially filed with the Commission on October 6, 1998. On May 26, 1999, NASD submitted Amendment No. 1 to delete provisions from the proposed rule change relating to punitive damages so that all such provisions could be separately considered in connection with the Punitive Damages Rule Filing. On July 27, 1999, NASD submitted Amendment No. 2 to clarify the proposed rule language regarding permissible limitations in predispute arbitration agreements, and changed the effective date of the proposed rule change to coincide with the Eligibility Rule Filing and Punitive Damages Rule Filing then pending before the Commission (SR–NASD–97–44 and SR–NASD–97–47).

[8] *See supra* note.

[9] *See supra* note.

Applicability of Disclosure Requirements to New and Existing Account Agreements

Members would be required to add the new disclosure requirements to all new customer account agreements containing predispute arbitration agreements as of the effective date of the rule. The proposed rule does not require members to replace existing agreements with current customers.

Incorporation of Arbitration Forum Rules

Paragraph (f)(1)(G) would provide that the rules of the arbitration forum in which a claim is brought, and any amendments thereto, shall be incorporated into the agreement. The purpose of this provision is to ensure that the rules of a forum apply to cases brought in that forum, and to avoid having to execute new agreements each time a forum changes its rules. For example, if a customer filed a complaint in an NASD arbitration forum, NASD's arbitration rules would apply in all respects to the agreement.

Requirement That Members Provide Copies of Customer Agreements and Information Regarding Arbitration Forums to Customers Upon Request

In some cases, customers have complained that they have not been able to obtain copies of the predispute arbitration agreements they have signed from members in a timely manner, and that they had unequal access to information about the respective rules of the arbitration forums in which claims may be filed under a given agreement. Under the proposed amendments, paragraph (f)(3)(A) would require that, within ten days of receiving a request, members must provide a customer with a copy of any predispute arbitration agreement clause or agreement that the customer had signed, or inform the customer that the member does not have a copy of the agreement. In addition, paragraph (f)(3)(B) would require that, upon request of a customer, a member must provide the customer with the names of, and information on how to contact or obtain the rules of, all arbitration forums in which a claim may be filed under the agreement.

Restrictions on Provisions That Limit Rights and Remedies

Much of the criticism of predispute arbitration agreements has focused on the use of choice-of-law provisions. A choice-of-law provision specifies that the law of a certain state will govern disputes arising out of an agreement. In some cases, the law of a state might limit the availability of certain remedies, such as punitive damages, or the ability of a customer to bring a claim. For example, previously under New York law, courts could award punitive damages, but arbitrators could not. A customer who agreed to arbitrate disputes under New York law could inadvertently forfeit the ability to obtain punitive damages that might have been available in court. (New York law on this subject has begun to shift in favor of arbitrators being able to award punitive damages.) Customers have argued that it is unfair for members to include provisions in predispute arbitration agreements that limit the availability of remedies, particularly when the effects of the provisions are not explained in the agreement.

Currently, Rule 3110(f) prohibits any choice-of-law provision that limits or contradicts the rules of any SRO, or that limits the ability of a party to file any claim in arbitration or of arbitrators to make any award. However, the application of this provision has not always been consistent or clear. In addition, some investors have expressed concern that choice-of-law provisions select arbitrary jurisdictions that have no relationship to the customer or the transaction at issue.

To address these concerns, paragraph (f)(4) of the Rule would be amended to clarify the prohibition against provisions that limit rights or remedies, including provisions that would circumvent the eligibility rule. The amended rule would also state that no choice-of-law provision would be enforceable unless there is a significant contact or relationship between the law selected and either the transaction at issue or one or more of the parties.

In response to the **Federal Register** publication of SR–NASD–98–74 in November, 1999,[10] two commenters expressed the view that the laws of the state in which the customer resides should apply in arbitration disputes.[11] NASD believes that it should not dictate to the parties of a predispute arbitration agreement the law that would govern their agreement. NASD believes the approach taken by the proposed rule change effectively balances the rights of parties to contractually agree on the law that will govern their disputes with the concerns expressed by customers regarding choice-of-law provisions in predispute arbitration agreements.

Non-Bifurcation Provision

NASD is proposing to amend Rule 3110(f) to include a provision prohibiting members from seeking to compel arbitration of some but not all of a customer's court-filed claims, in order to prevent members from forcing customers to litigate in two forums when they filed a complaint in court that contained both eligible and ineligible claims.[12] Therefore, NASD is proposing to add a new paragraph (f)(5) to Rule 3110 that would require members seeking to compel arbitration of claims filed in court to agree to arbitrate all of the claims contained in the court-filed complaint, even if some of the claims would be ineligible for arbitration under the eligibility rule. The purpose of these provisions in Rule 3110(f) is to give the customer control over whether claims are bifurcated.

Effective Date Provisions

The proposed amendments to Rule 3110(f) would require various changes to the customer agreements used by member firms. In order to provide enough time for firms to modify customer agreements, NASD has determined that this rule filing, if approved, should take effect 90 days after publication of a *Notice to Members* announcing Commission approval of the proposed rule change. NASD would issue the Notice to Members within 60 days of receiving Commission approval.

The proposed amendments to Rule 3110(f) would also provide that agreements signed before the effective date of the Rule as amended would be subject to the provisions of 3110(f) in effect at the time the agreement was signed.

Restriction of Rule to Customer Account Agreements

Some members of NASD's National Arbitration and Mediation Committee expressed concern that the rule, which currently applies to all predispute arbitration clauses in any agreement between member firms and customers, could be construed to apply to agreements between a member firm and large institutional clients with whom they had face-to-face negotiations over the terms of the agreement. To address this concern, the rule would be amended to clarify that it only applies

[10] *See supra* note.

[11] *See* Estell Letter and Miller Letter, *supra* note.

[12] In June 2003, NASD filed proposed amendments to Rule 10304 relating to time limits for the submission of claims to arbitration. The proposed rule change seeks to amend Rule 10304 to provide that by requesting dismissal of a claim on eligibility grounds in the NASD forum, the requesting party is agreeing that the claimant may withdraw all related claims without prejudice and may pursue all of the claims in court. The proposed provision seeks to protect parties against involuntary bifurcation of claims. The filing is currently pending with the Commission. *See* Securities Exchange Act Release No. 48225 (July 25, 2003), 68 FR 45299 (August 1, 2003) (SR–NASD–2003–101).

to customer accounts and not to other agreements between member firms and large institutional clients with whom they had negotiated contract terms.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the 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 amendments to Rule 3110(f) will serve the public interest by providing customers with more complete information about the arbitration process.

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

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 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 Amendment Nos. 3 and 4, 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 will also be available for inspection and copying at the principal office of NASD. All submissions should refer to File No. SR–NASD–98–74 and should be submitted by October 3, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–23224 Filed 9–11–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48438; File No. SR–NASD–2003–74]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Regarding the Regulation of Activities of Members Experiencing Financial and/or Operational Difficulties

September 4, 2003.

On April 16, 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: (i) amend NASD Rules 3130, 3131 and the Rule 9410 Series to expand NASD's authority to take expedited action against all member firms with capital deficiencies and to permit NASD to suspend a member that operates for any period of time with inadequate net capital, and (ii) delete subparagraph (g) of NASD Rule 9160 because NASD's Department of Member Regulation staff does not participate as an adjudicator in an NASD Rule 9410 decision. On June 17, 2003, NASD submitted Amendment No. 1 to the proposed rule change.[3] On July 9, 2003, NASD submitted Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended by Amendment No. 1 and Amendment No. 2, was published for comment in the **Federal Register** on July 31, 2003.[5] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

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.[6] Specifically, the Commission believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[7] 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 proposed amendments adequately address those circumstances where limiting an NASD member's business operations would be futile. Specifically, the Commission believes that because the proposal permits NASD to suspend any member that operates for any period of time with inadequate net capital, as required by Rule 15c3–1 under the Act, and § 402.2 of the rules of the Treasury Department, the proposed rule change should protect investors, market participants, and the general public from the risks posed by members operating securities businesses without appropriate levels of capital.

The Commission believes that the proposal to apply NASD Rules 3130 and 3131 to all members regardless of their minimum capital requirements should protect investors and the public interest. The Commission believes that any firm that operates with inadequate capital poses a risk to other firms and investors. Accordingly, the Commission believes

[13] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated June 17, 2003 (''Amendment No. 1'').

[4] *See* letter from Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated July 8, 2003 (''Amendment No. 2'').

[5] *See* Securities Exchange Act Release No. 48227 (July 25, 2003), 68 FR 44980.

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

[7] 15 U.S.C. 78*o*–3(b)(6).