

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52294; File No. SR-NASD-2004-025)

August 18, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change to Amend NASD's Minor Rule Violation Plan

On February 10, 2004, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend its minor rule violation plan ("MRVP"). On March 17, 2005, NASD filed Amendment No. 1 to the proposed rule change. On June 27, 2005, NASD filed Amendment No. 2 to the proposed rule change. The proposed rule change, as amended, was published for comment in the Federal Register on July 14, 2005.<sup>3</sup> The Commission received two comments on the proposal.<sup>4</sup> This order approves the proposed rule change, as amended.

NASD proposed to make the following changes to its MRVP:

- Combine in one entry all rule violations eligible for disposition under the MRVP that relate to transaction reporting and audit trail requirements in equity and debt securities. Specifically, NASD proposes to eliminate the separate minor rule violation pertaining to NASD Rules 6130 and NASD 6170 (transaction reporting to the Automated Confirmation Transaction Service) and add them to a

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

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

<sup>3</sup> See Securities Exchange Act Release No. 51994 (July 7, 2005), 70 FR 40764.

<sup>4</sup> See e-mails to [rule-comments@sec.gov](mailto:rule-comments@sec.gov) from Scott Lynn Fagin, Chief Compliance Officer and Chief Financial Officer, The Jeffrey Matthews Financial Group, LLC, dated August 5, 2005; and Joseph W. Mays, Jr., President, Securities Consulting Group, Inc., dated August 1, 2005. The comments are not germane to the proposal and thus do not raise any issue that would preclude approval of this proposal.

consolidated entry; add to the MRVP, and this consolidated entry, violations of NASD Rules 4632A, 5430, 6130A, and 6170A, which relate to TRACS requirements; and eliminate the reference in the MRVP to a violation of the Fixed Income Pricing System, NASD Rule 6240, and replace it with a violation of NASD Rule 6230, the TRACE transaction reporting rule.

- Include in the MRVP violations of standards applicable to member communications with the public (NASD Rules 2210, 2211, and 2220, and related Interpretive Materials) which would allow NASD to address minor or technical violations of content-related advertising rules.
- Expand the MRVP to include a member's failure to identify to NASD and keep current information regarding any contact person that a member must provide to NASD under any current or future NASD rule.
- Change "the Association" to "NASD" in the minor rule violation provision relating to NASD Rule 3110 and change "ECN's" to "ECNs" in the minor rule violation provision relating to Rule 11Ac1-1(c)(5) under the Act.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>5</sup> In particular, the Commission believes that the proposal is consistent with Section 15A(b)(6) of the Act,<sup>6</sup> which requires that the rules of an association be designed to promote just and equitable principles of trade, to remove impediments to and perfect the

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<sup>5</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 15A(b)(2) and 15A(b)(7) of the Act<sup>7</sup> which require that the rules of an association enforce compliance and provide appropriate discipline for violations of Commission and association rules. In addition, because existing NASD Rule 9216(b) provides procedural rights to a person fined under the MRVP to contest the fine and permits a hearing on the matter, the Commission believes the MRVP, as amended by this proposal, provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 15A(b)(8) and 15A(h)(1) of the Act.<sup>8</sup>

Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,<sup>9</sup> which governs minor rule violation plans. The Commission believes that the change to its MRVP will strengthen NASD's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposal, the Commission in no way minimizes the importance of compliance with NASD rules and all other rules subject to the imposition of fines under NASD's MRVP. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, an MRVP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary

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<sup>7</sup> 15 U.S.C. 78o-3(b)(2) and 78o-3(b)(7).

<sup>8</sup> 15 U.S.C. 78o-3(b)(8) and 78o-3(h)(1).

<sup>9</sup> 17 CFR 240.19d-1(c)(2).

proceedings, while providing greater flexibility in handling certain violations. The Commission expects that NASD will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the MRVP or whether a violation requires formal disciplinary action.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act<sup>10</sup> and Rule 19d-1(c)(2) under the Act,<sup>11</sup> that the proposed rule change (SR-NASD-2004-025), as amended, be, and hereby is, approved and declared effective.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 240.19d-1(c)(2).

<sup>12</sup> 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(44).