

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50477; File No. SR-NASD-2004-116)

September 30, 2004

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change and Amendment No. 1 by National Association of Securities Dealers, Inc. Relating to Supervisory Control and Inspection Procedures

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 2, 2004, the National Association of Securities Dealers, Inc. (“NASD”), filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On September 23, 2004, NASD submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons. For the reasons discussed below, the Commission is granting accelerated approval to the proposed rule change, as modified by Amendment No. 1.

I. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

NASD is proposing to amend NASD Rules 3010 and 3012, with the intention of aligning certain supervisory control and inspection requirements with the corresponding supervisory control and inspection requirements in New York Stock Exchange (“NYSE”) Rule 342.19 and NYSE Interpretation Handbook provision 342(a)(b)/03. NASD is also proposing several amendments to NASD Rule 2510, relating to discretionary accounts, that NASD states are non-

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Patricia Albrecht, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated September 23, 2004 (“Amendment No. 1”).

substantive and technical. The SEC approved these rules in their current form on June 17, 2004.⁴ Below is the text of the proposed rule change, as modified by Amendment No. 1. Proposed new language is in italics; proposed deletions are in brackets.

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2510. Discretionary Accounts

(a) through (c) No Change.

(d) Exceptions

This Rule shall not apply to:

(1) discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a security shall be executed, except that the authority to exercise time and price discretion will be considered to be in effect only until the end of the business day on which the customer granted such discretion, absent a specific, written contrary indication signed and dated by the customer. This limitation shall not apply to time and price discretion exercised [for orders effected with or for] in an institutional account, as defined in Rule 3110(c)(4), pursuant to valid Good-Till-Cancelled instructions issued on a “not-held” basis. Any exercise of time and price discretion must be reflected on the [customer] order ticket.

(2) No Change.

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⁴ See Exchange Act Release No. 49883, 69 FR 35092 (June 23, 2004) (order approving NASD’s proposed rule change); Exchange Act Release No. 49882 (June 17, 2004), 69 FR 35108 (June 23, 2004) (order approving NYSE’s proposed rule change).

3010. Supervision

(a) through (b) No change.

(c) Internal Inspections

(1) through (2) No change.

(3) An office inspection by a member pursuant to paragraph (c)(1) may not be conducted by the branch office manager or any person within that office who has supervisory responsibilities or by any individual who is directly or indirectly supervised by such person(s). However, if a member is so limited in size and resources that it cannot comply with this limitation (e.g., a member [with] has only one office or a member with a business model where small or single-person offices report directly to an office of supervisory jurisdiction manager who is also considered the offices' branch office manager), the member may have a principal who has the requisite knowledge to conduct an office inspection perform the inspections. The member, however, must document in the office inspection reports the factors it has relied upon in determining that it is so limited in size and resources that it has no other alternative than to comply in this manner.

A member must have in place procedures that are reasonably designed to provide heightened office inspections if the person conducting the inspection reports to the branch office manager's supervisor or works in an office supervised by the branch manager's supervisor and the branch office manager generates 20% or more of the revenue of the business units supervised by the branch office

manager's supervisor. For the purposes of this subsection only, the term "heightened inspection" shall mean those inspection procedures that are designed to avoid conflicts of interest that serve to undermine complete and effective inspection because of the economic, commercial, or financial interests that the branch manager's supervisor holds in the associated persons and businesses being inspected. In addition, for the purpose of this section only, when calculating the 20% threshold, all of the revenue generated by or credited to the branch office or the branch office manager shall be attributed as revenue generated by the business units supervised by the branch office manager's supervisor irrespective of a member's internal allocation of such revenue. A member must calculate the 20% threshold on a rolling, twelve-month basis.

(d) through (g) No Change.

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3012. Supervisory Control System

(a) General Requirements

(1) No change.

(2) The establishment, maintenance, and enforcement of written supervisory control policies and procedures pursuant to paragraph (a) shall include:

(A) procedures that are reasonably designed to review and supervise the customer account activity conducted by the member's branch office managers, sales managers, regional or district sales managers, or any person performing a similar supervisory function.

(i) A person who is either senior to, or otherwise independent of, the producing manager must perform such supervisory reviews. For purposes of this Rule, an “otherwise independent” person: may not report either directly or indirectly to the producing manager under review; must be situated in an office other than the office of the producing manager; must not otherwise have supervisory responsibility over the activity being reviewed (including not being directly compensated based in whole or in part on the revenues accruing for those activities); and must alternate such review responsibility with another qualified person every two years or less. [However, if a member (i) does not conduct a public business, (ii) or has a capital requirement of \$5,000 or less, or (iii) employs 10 or fewer representatives and, in the case of (i) through (iii), its business is conducted in a manner necessitated by a limitation of resources that includes fewer than two layers of supervisory personnel, a person in another office of the member who is in the same or similar position to the producing manager may conduct the supervisory reviews, provided that the person in the same or similar position does not have supervisory responsibility over the activity being reviewed, reports to his supervisor his supervision and review of the producing manager, and has not performed a review of the producing manager in the last two years.]

(ii) If a member is so limited in size and resources that there is no qualified person senior to, or otherwise independent of, the producing

manager to conduct the reviews pursuant to (i) above [it cannot avail itself of this exception] (e.g., a member [with] has only one office or [a member with two offices and] an insufficient number of qualified personnel who can conduct reviews on a two-year rotation), [a member may have] the reviews may be conducted by a principal who is sufficiently knowledgeable of the member's supervisory control procedures[conduct these reviews], provided that the reviews are in compliance with (i) to the extent practicable.

(iii) A member relying on (ii) above must document in its supervisory control procedures the factors used to determine that complete compliance with all of the provisions of (i) is not possible and that the required supervisory systems and procedures in place with respect to any producing manager comply with the provisions of (i) above to the extent practicable. [The member, however, must document in its supervisory control procedures the factors it has relied upon in determining that its size and the resources available to it are so limited that the member has no other alternative than to comply in this manner.]

(B) procedures that are reasonably designed to review and monitor the following activities:

(i) all transmittals of funds (e.g., wires or checks, etc.) or securities from customers [and] to third party accounts (i.e., a transmittal that would result in a change of beneficial ownership); from customer

accounts to outside entities (e.g., banks, investment companies, etc.); from customer accounts to locations other than a customer's primary residence (e.g., post office box, "in care of" accounts, alternate address, etc.); and between customers and registered representatives, including the hand-delivery of checks;

(ii) through (iii) No change.

The policies and procedures established pursuant to paragraph (a)(2)(B) must include a means or method of customer confirmation, notification, or follow-up that can be documented. If a member does not engage in all of the activities enumerated above, the member must identify those activities in which it does not engage in its written supervisory control policies and procedures and document in those policies and procedures that additional supervisory policies and procedures for such activities must be in place before the member can engage in them; and

(C) procedures that are reasonably designed to provide heightened supervision over the activities of each producing manager who is responsible for generating 20% or more of the revenue of the business units supervised by the producing manager's supervisor. For the purposes of this subsection only, the term "heightened supervision" shall mean those supervisory procedures that evidence supervisory activities that are designed to avoid conflicts of interest that serve to undermine complete and effective supervision because of the economic, commercial, or financial interests that the supervisor holds in the associated

persons and businesses being supervised. In addition, for the purpose of this section only, when calculating the 20% threshold, all of the revenue generated by or credited to the producing manager or the producing manager's office shall be attributed as revenue generated by the business units supervised by the producing manager's supervisor irrespective of a member's internal allocation of such revenue. A member must calculate the 20% threshold on a rolling, twelve-month basis.

(b) No change.

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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

On June 17, 2004, the SEC approved proposed changes to NASD and NYSE rules generally requiring the establishment, maintenance, and testing of supervisory control procedures; enhanced inspection procedures; documentation and recordkeeping procedures for account name/designation changes; limitations on holding customer mail; and a one-day limit on

time and price discretionary authority for retail customer orders.⁵ NASD's and NYSE's new requirements are substantially similar. NASD believes that similarity between the rules should be enhanced by conforming certain inspection and supervisory control requirements in NASD Rules 3010 and 3012 to the corresponding requirements in NYSE Rule 342.19 and NYSE Interpretation Handbook provision 342(a)(b)/03, as well as certain provisions relating to discretionary accounts in NASD Rule 2510(d) to the corresponding provisions in NYSE Rule 408(d).

(a) NASD Rule 3010(c) (Internal Inspections)

NASD Rule 3010(c)(3) prohibits a branch office manager, any person within that office who has supervisory responsibilities, or any individual who is supervised by such person from conducting an office inspection. In comparison, according to NASD, NYSE Interpretation Handbook provision 342(a)(b)/03 (Annual Branch Office Inspection) specifies that any person who directly or indirectly reports to the branch office manager is prohibited from conducting an office inspection. NASD proposes to revise Rule 3010(c)(3) similarly to specify that any individual who is directly or indirectly supervised by the branch office manager is prohibited from conducting an office inspection.

(b) NASD Rule 3012 (Supervisory Control System)

NASD Rule 3012(a)(2)(A) requires members' supervisory control policies and procedures to include procedures that are "reasonably designed to review and supervise the

⁵ See Exchange Act Release No. 49883 (June 17, 2004), 69 FR 35092 (June 23, 2004) (order approving NASD's proposed rule change); Exchange Act Release No. 49882 (June 17, 2004); 69 FR 35108 (June 23, 2004) (order approving NYSE's proposed rule change).

customer account activity conducted by the member’s branch office managers, sales managers, regional or district sales managers, or any person performing a similar supervisory function.”⁶ Currently, with two limited exceptions discussed below, the rule permits only a person who is senior to the producing manager to perform supervisory reviews of customer account activity conducted by the managers discussed in the rule (i.e., “producing manager”).

NASD Rule 3012(a)(2)(A) provides a limited exception from the “senior to” requirement if a member has fewer than two layers of supervisory personnel and (i) does not conduct a public business, (ii) has a capital requirement of \$5,000 or less, or (iii) employs 10 or fewer representatives. Members meeting these conditions may assign supervisory reviews to a person in another office who is in the same or similar position to the producing manager being reviewed (the “first exception”).⁷

NASD Rule 3012 (a)(2)(A) further provides that if a member is so limited in size and resources that it cannot meet even the conditions enumerated in the first exception, the member may assign a principal to conduct supervisory reviews (the “second exception”).⁸ Under NASD Rule 3012(a)(2)(A), a member relying on the second exception must document the factors it has relied upon in determining that its size and resources are so limited that it has no other alternative

⁶ NASD Rule 3012(a)(2)(A).

⁷ Such a person assigned may not have supervisory responsibility over the activity being reviewed, must report to his supervisor his supervision and review of the producing manager, and may not have performed a review of the producing manager in the last two years.

⁸ Such a principal must be sufficiently knowledgeable of the member’s supervisory control procedures.

but to comply in this manner.⁹

1. Review of Producing Manager’s Customer Account Activity

NASD is proposing changes to its general standard for supervisory reviews to provide that the person reviewing a producing manager’s customer account activities may be “either senior to or otherwise independent of,” rather than merely senior to, that producing manager. This proposed modification is intended to make NASD Rule 3012(a)(2)(A) more similar to NYSE Rule 342.19. For purposes of proposed NASD Rule 3012, an “otherwise independent” person may not report either directly or indirectly to the producing manager under review, must be situated in an office other than the office of the producing manager, must not otherwise have supervisory responsibility over the activity being reviewed (i.e., may not be directly compensated based in whole or in part on the revenues accruing from the activity being reviewed), and must alternate such review responsibility with another qualified person every two years or less.

Under NASD Rule 3012(a)(2)(C), members must establish, maintain, and enforce heightened supervisory procedures over activities of each producing manager who generates 20% or more of the revenue of the business units supervised by the producing manager’s supervisor (a “20% producing manager”). NASD notes that the review of a producing manager’s activities by an “otherwise independent” person would not obviate the need for heightened supervisory procedures if such procedures otherwise apply under NASD Rule

⁹ In comparison, according to NASD, NYSE Rule 342.19 requires that a member relying on the corresponding NYSE exception for members of limited size and resources must document the factors used to determine that (i) complete compliance with all of the provisions of NYSE’s general standard for

3012(a)(2)(C).¹⁰ Moreover, as discussed above, an “otherwise independent” person may not be directly compensated based in whole or in part on the revenues accruing from the activities being reviewed. Therefore, a supervisor of a 20% producing manager would not be considered “otherwise independent” with respect to that producing manager, for purposes of NASD Rule 3012(a)(2)(A).

2. Exception for Firms with Limited Resources

To make NASD Rule 3012 more similar to NYSE Rule 342.19, NASD is proposing to eliminate the first exception to the “senior to” requirement in current NASD Rule 3012(a)(2)(A), in which a member that has fewer than two layers of supervisory personnel and (i) does not conduct a public business, (ii) has a capital requirement of \$5,000 or less, or (iii) employs 10 or fewer representatives, may assign a person in the same or similar position to the producing manager to conduct supervisory reviews, under certain conditions. Instead, proposed NASD Rule 3012(a)(2)(A)(ii) provides that a member “so limited in size and resources that there is no qualified person senior to, or otherwise independent of, the producing manager” being reviewed may assign “a principal who is sufficiently knowledgeable of the member’s supervisory control procedures” to conduct the supervisory reviews. An example of a member that could rely on this proposed exception is one that “has only one office or an insufficient number of qualified

supervisory reviews of customer account activity is not possible, and (ii) the member’s supervisory systems and procedures comply with the standard to the extent possible.

¹⁰ Examples of “heightened supervisory procedures” are discussed in Exchange Act Release No. 49883, 69 FR 35098, and include unannounced supervisory reviews and an increased number of supervisory reviews by different reviewers within a certain period of time.

personnel who can conduct reviews on a two-year rotation.”¹¹ The proposed change is intended to provide NASD members with the same flexibility in structuring their supervisory review policies and procedures that NYSE members have.

NASD also is proposing to revise the current documentation requirements in NASD Rule 3012 for members that rely on the proposed exception so that the requirements are more similar to those of NYSE Rule 342.19. NASD members would be required to document in its supervisory control procedures the factors used to determine that complete compliance with the “either senior to or otherwise independent” standard is not possible, and that the procedures that are in place comply with the standard to the extent practicable. NASD believes that these documentation requirements will result in members providing in greater detail the factors relied upon in determining that they must use the exception rather than the general supervisory review standard, as well as how closely their policies and practices track the general requirements.

NASD has agreed to file a separate amendment to NASD Rule 3012, following the approval of the proposed exception and documentation requirements, to require that members inform NASD if they rely or intend to rely on the proposed exception.¹² Members would inform NASD through reports filed on a web-based reporting system or other automated electronic platform. This manner of reporting will allow NASD to collect the necessary information quickly and efficiently and provide the information to the Commission promptly, promote timeliness of amendments (e.g., members’ changes to their use of the proposed exception), and

¹¹ See Amendment No. 1 (proposing to change a one-year rotation condition, as proposed in the original filing, to a two-year rotation condition).

¹² See letter from Marc Menchel, Executive Vice President and General Counsel, to Catherine McGuire, Chief Counsel, Division of Market Regulation, Commission, dated September 28, 2004.

allow NASD Member Regulation to integrate the information for their purposes without having to process manually paper notifications. NASD estimates that it should take no more than one year from the date this filing is approved to construct and bring on-line this web-based system or other electronic platform. NASD intends to require its members to begin reporting their use of the exception when the reporting system is brought on-line.

Finally, NASD is proposing several changes to NASD Rule 3012 to enhance the readability of the rule. The first set of proposed changes would be made to an example NASD provides, in proposed NASD Rule 3012(a)(2)(A)(ii), of a member that may rely on the proposed exception. In particular, NASD is proposing to remove from the example members with two offices but with insufficient resources to rely on the general review procedure. In addition, NASD Rule 3012(a)(2)(B)(i), procedures pertaining to transmittals of funds, would be revised as follows: “all transmittals of funds (e.g., wires or checks, etc.) or securities from customers [and] to third party accounts . . . from customer accounts to locations other than a customer’s primary residence (e.g., post office box . . .).”

(c) NASD Rule 2510 (Discretionary Accounts)

NASD also is proposing to make certain changes to NASD Rule 2510 (Discretionary Accounts). Currently, NASD Rule 2510(d)(1) does not require written authorization for the exercise of time and price discretion beyond a day for orders effected “with or for an institutional account,” if such discretion is exercised pursuant to valid Good-Til-Cancelled instructions issued on a not-held basis. The proposal, intended to be non-substantive and to enhance the rule’s readability, would change the words “with or for an institutional account” to “in an institutional

account.” In addition, NASD is proposing to clarify that time and price discretion must be reflected on all order tickets.¹³

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 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 is proposing these requirements to ensure that its members have in place standards that are reasonably designed to prevent fraudulent and manipulative acts, thereby protecting investors and the public interest. In addition, in light of the nature and content of these particular rules, NASD believes that NASD's and the NYSE's rules in this area should be substantially similar.

(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.

¹³ This change would be accomplished by deleting the word “customer” from the sentence “Any exercise of time and price discretion must be reflected on the customer order ticket,” and, as proposed in Amendment No. 1, by moving the sentence from the end of NASD Rule 2510(d)(2), where it currently appears, to the end of NASD Rule 2510(d)(1).

III. COMMISSION'S FINDINGS AND ORDER GRANTING ACCELERATED APPROVAL OF PROPOSED RULE CHANGE

NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act¹⁴ for approving the proposed rule change as amended prior to the 30th day after publication in the Federal Register. After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NASD, in particular, Section 15A and the rules and regulations thereunder. Specifically, the Commission finds that the proposed rule change is consistent with the requirements of Section 15A(b)(6)¹⁵ of the Act because it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. The Commission finds that NASD's proposal is designed to accomplish these ends by requiring NASD members to establish supervisory procedures for the monitoring of customer account activities that promote independent review of their employees to the extent practicable.

(A) NASD Rule 3010(c) (Internal Inspections)

The Commission believes that the NASD's proposal with respect to prohibiting any person who directly or indirectly reports to the branch office manager of the branch office being inspected should provide clearer guidance on who may perform internal inspections. The Commission believes that this clarification should address conflicts of interest and further the general purpose of promoting the detection and reporting of fraudulent activity in customer accounts, without imposing undue burdens on members.

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 15 U.S.C. 78o-3(b)(6).

(B) NASD Rule 3012 (Supervisory Control System)

NASD has proposed that persons “either senior to or otherwise independent of” a producing manager would be qualified to review and supervise the customer account activity conducted by that producing manager. In contrast, NASD Rule 3012 currently permits only persons senior to a producing manager to conduct such reviews.

The Commission believes that this proposed change will provide more flexibility for NASD members to conduct supervisory reviews of customer account activity consistent with that already provided to NYSE members under NYSE Rule 342.19. To the extent the rules of the NASD and NYSE are consistent, opportunities for regulatory arbitrage will be diminished, which should enhance compliance with more rigorous supervisory control procedures. We believe the “otherwise independent” standard as proposed by NASD contains adequate safeguards to limit the conflicts of interest of the person conducting the reviews, thereby preserving the integrity of those reviews. In this regard, to qualify as an “otherwise independent” person, the reviewer may not report either directly or indirectly to the producing manager under review, must be in an office other than that of the producing manager, and must not otherwise have supervisory responsibility over the activity being reviewed. Moreover, an “otherwise independent” person may not be directly compensated based in whole or in part on the revenues accruing from the activities being reviewed, and must alternate such review responsibility with another qualified person every two years or less.

In addition, NASD has proposed to revise the exceptions, intended only for members of limited size and resources, from compliance with the general standard for who may conduct supervisory reviews. In particular, NASD is proposing to amend NASD Rule 3012(a)(2)(A) to

permit members “so limited in size and resources that there is no qualified person senior to, or otherwise independent of, the producing manager,” to appoint a principal to conduct supervisory reviews, provided that the reviews are in compliance with the general supervisory standard to the extent practicable. The principal must be sufficiently knowledgeable of the member’s supervisory control procedures. The Commission believes that the proposal is consistent with the Act as an accommodation to the smallest NASD members that lack the resources to implement a full scale program to conduct supervisory reviews. Nevertheless, the Commission expects NASD to monitor carefully the use of this exception to be certain that only members for whom it is intended take advantage of it, and that this exception is not abused. In this regard, the Commission stresses the importance of the NASD’s agreement to file an amendment to NASD Rule 3012, following the issuance of this Order, to require members to provide reports to NASD if they rely on or intend to rely on this proposed exception. At a minimum, such reports should provide the number of employees of each such member, the member’s net capital, as well as its annual revenues, and would be made available by the NASD to the Commission or its staff upon request. The Commission believes that such a reporting system is essential to ensuring that the exception in NASD Rule 3012(a)(2)(A)(ii) is used only by those firms for which it is intended (i.e., those with very limited resources).

Finally, NASD has proposed to revise the documentation standards a member must satisfy when it relies on NASD Rule 3012(a)(2)(A)(ii), as proposed. Under the proposal, a member relying on this exception must document the factors used to determine that complete compliance with all of the provisions of the “either senior to or otherwise independent of” standard is not possible, and that the member’s supervisory systems and procedures comply with

this standard to the extent practicable. The Commission believes that NASD's proposed documentation requirement, in addition to the reports discussed above, should help to ensure that this exception is not abused or used by members other than those for which it is intended.

(C) NASD Rule 2510(d) (Discretionary Accounts)

The Commission believes that the proposed changes to NASD Rule 2510(d) are consistent with the Act. They generally improve the readability of the rule and clarify that any exercise of time and price discretion must be reflected on all order tickets.

(D) Accelerated Approval

The Commission believes that there is good cause for approving the proposed rule change and Amendment No. 1 prior to the 30th day after publication in the Federal Register. The proposed rule change is amending rules that were approved on June 17, 2004, which currently have an effective date of December 17, 2004.¹⁶ Pursuant to the NASD's request, the effective date of January 31, 2005 will apply to the proposed rule change, as modified by Amendment No. 1, as well as to the amendments made to NASD Rules 2510, 3010, 3012, 3110, and IM 3110 that the Commission approved in June 2004.¹⁷ Accelerated approval of this proposed rule change and Amendment No. 1 will enable NASD to announce promptly the final rules, as modified, thereby lessening member confusion as to the final requirements of NASD Rules 3010 and 3012 and permitting members to make the necessary changes to comply with them. Based on the above, the Commission finds good cause, consistent with Section 15A(b)(6) and Section 19(b)(2)

¹⁶ See Exchange Act Release No. 49883, 69 FR 35092 (June 23, 2004) (order approving NASD's proposed rule change).

¹⁷ See Amendment No. 1.

of the Act, for approving the proposed rule change and Amendment No. 1 prior to the 30th day after the date of publication of notice of filing thereof in the Federal Register.

IV. SOLICITATION OF COMMENTS

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change as amended 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. Please include File Number SR-NASD-2004-116 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2004-116. 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the 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-2004-116 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NASD-2004-116), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland

Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).