

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49497; File No. SR-NASD-2003-184)

March 29, 2004

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., to Require Members to Review and Update Executive Representative Contact Information on a Quarterly Basis

I. Introduction

On December 8, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission" or "SEC"), 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 require members to conduct a review, and, if necessary, update their executive representative contact information on a quarterly basis, specifically within 17 business days after the end of each calendar quarter. The proposed rule change was published for notice and comment in the Federal Register on January 27, 2004.³ The Commission received two comment letters on the proposal.⁴ On March 17, 2004, the NASD filed a response to comments.⁵ This order approves the proposed rule change.

II. Summary of Comments

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 49110 (January 21, 2004), 69 FR 3973.

⁴ See February 4, 2004 letter from Bradley C. McCurtain, Maine Securities Corporation ("MSC letter")(via e-mail), and February 16, 2004 letter from John J. Dardis, President, Jack Dardis & Associates, LTD ("Dardis letter")(via e-mail).

⁵ See March 17, 2004 letter from Grace Yeh, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission ("NASD letter").

The Commission received two comment letters on the NASD's proposal.⁶ One commenter expressed full support for the proposal, but suggested the information become a line item on the quarterly FOCUS report, because "small firms seldom have executive management changes."⁷ The other commenter found it "difficult to not agree" with the NASD's proposal, but noted a lack of instructions on how the NASD will implement the proposed rule change, and a concern that the costs of the proposed rule change might outweigh the benefits of the new requirement.⁸ The commenter raised a number of specific questions, including:

- Is the lack of current information a quarterly problem?
- Do contact persons change that often?
- Is this a significant problem with small broker-dealers?
- What is the penalty if a member fails to comply for one quarter?
- If there is no response from the designated person, can the local district follow up

to see if there has been a change?⁹

NASD, in response to the comments, stated the proposal "is essential to its ability to regulate the marketplace."¹⁰ NASD believes that requiring members to review and update such information will "help ensure the accuracy of the information."¹¹

⁶ See footnote 4, *supra*.

⁷ MSC letter.

⁸ Dardis letter.

⁹ *Id.*

¹⁰ NASD letter at 1.

¹¹ NASD has proposed similar quarterly contact information review requirements. See Securities Exchange Act Release Nos. 49246 (February 13, 2004), 69 FR 8255 (February 23, 2004)(SR-NASD-2003-183)(order approving continuing education contact person(s) quarterly update requirement), and 46444 (August 30, 2002), 67 FR 57257 (September 9,

NASD stated it will collect the information through NASD's Contact System ("NCS"), with all quarterly reviews and updates being performed on a central location in NCS.

Additionally, NASD will require members "to perform all quarterly reviews and updates on the same schedule (i.e., within 17 business days after the end of each quarter)."¹²

In response to a commenter's suggestion that NASD add the executive representative contact information directly to the FOCUS report, NASD "notes that the FOCUS report is an SEC document, requiring SEC action to be amended, and that any amendments to such form tend to be related to financial reporting requirements."¹³ Instead, to help members comply with this new requirement, NASD is considering different methods of notifying members of the need to update their executive representative designation and contact information, including (1) reminders that are contemporaneous with the act of filing a quarterly FOCUS report; (2) periodic e-mail broadcasts distributed to members' executive representatives; and (3) individual e-mails to executive representatives.¹⁴

The NASD explained that failure to provide the requisite information during the 17 business days following each calendar quarter can result in disciplinary action by NASD.¹⁵ NASD noted that, in SR-NASD-2004-025,¹⁶ NASD seeks to amend its minor rule violation plan to address violations of the requirement that members provide or update contact information.

2002)(SR-NASD-2002-108)(proposing quarterly update of emergency contact information).

¹² NASD letter at 2.

¹³ Id.

¹⁴ Id.

¹⁵ NASD letter at 3 ("NASD may use informal or formal means to enforce violations of its rules").

¹⁶ The Commission has not yet published notice of SR-NASD-2004-025. Copies of the proposed rule change are available at the Commission and at the NASD.

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, the comment letters, and the NASD's response to the comments, and 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 association¹⁷ and, in particular, the requirements of Section 15A(b)(6) of the Act,¹⁸ 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.

Specifically, the Commission believes the proposed rule change should assist the NASD in maintaining accurate information about its members' executive representative designation and contact information. Balancing the important role of an executive representative, the NASD's need for accurate information, and the NASD's efforts to minimize the burden of reporting on a quarterly basis the information described in this proposed rule change, the Commission believes the proposed rule change is reasonable and consistent with the purposes of the Act. The Commission also is satisfied that NASD has adequately addressed the commenters' concerns.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act¹⁹, that the

¹⁷ 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).

¹⁸ 15 U.S.C. 78o-3(b)(6).

¹⁹ 15 U.S.C. 78s(b)(2).

proposed rule change (SR-NASD-2003-184) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

Margaret H. McFarland
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).