

the market. This is consistent with CBOE Rule 24.4.

For purposes of calculating customer margin requirements, the Revised Index, just like the Old Index, is considered a broad-based index for purposes of calculating customer margin requirements.

#### *Surveillance*

The Exchange represents that its surveillance procedures are adequate to monitor the trading in options and LEAPS on the Reduced Value Index. The CBOE does not believe that there are any material differences in the manner in which options on the Reduced Value Index will trade. The Exchange also believes that reducing the value of the Revised Index, as well as the other changes to the index's design and calculation, does not raise any new concerns about manipulation or adverse market impact. As a result, the Exchange believes that the existing surveillance procedures as they applied to the Old Index options should be adequate to detect or deter manipulation.<sup>8</sup> The CBOE also shall provide to members a formal notice which will describe the Revised Index, the Reduced Value Index, the new options root ticker symbol, and the options series to be listed on the Reduced Value Index.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</sup> in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

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

The CBOE does not believe that the proposed rule change will impose any burden on competition.

#### *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 Exchange 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 the foregoing, 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 the Exchange. All submissions should refer to file number SR-CBOE-2003-14 and should be submitted by September 26, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-48242; File No. SR-NASD-2003-92]

#### **Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval To a Proposed Rule Change To Adopt NASD Rule 2370 To Govern Certain Lending Arrangements Between Registered Persons and Customers**

August 29, 2003.

#### **I. Introduction**

On June 11, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), 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 adopt NASD Rule 2370 which would prohibit registered persons from borrowing money from or lending money to a customer unless the member has written procedures allowing such lending arrangements consistent with the rule, the loan falls within one of five prescribed permissible types of lending arrangements, and the member pre-approves the loan in writing. The proposed rule change was published for comment in the **Federal Register** on July 2, 2003.<sup>3</sup> The Commission received two comment letters on the proposal.<sup>4</sup> In addition, NASD submitted a response to comments.<sup>5</sup> This order approves the proposed rule change.

#### **II. Description of the Proposed Rule Change**

Under the proposal, registered persons would be prohibited from borrowing money from or lending money to a customer unless the member has written procedures allowing such lending arrangements consistent with the proposal, the loan falls within one of five permissible types of lending arrangements, and the member pre-

<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. 48093 (June 26, 2003), 68 FR 39608.

<sup>4</sup> See letters to Jonathan G. Katz, Secretary, Commission, from Christine A. Bruenn, President, Maine Securities Administrator, North American Securities Administrators Association, Inc. ("NASAA"), dated July 23, 2003, ("NASAA Letter"); and Michael C. Herndon, Director, Public and Governmental Affairs, Certified Financial Planner Board of Standards, Inc. ("CFP"), dated July 23, 2003 ("CFP Letter").

<sup>5</sup> See letter to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, from Shirley H. Weiss, Associate General Counsel, NASD, dated July 29, 2003 ("NASD Letter").

<sup>8</sup> Telephone conversation between Jim Flynn, Attorney II, CBOE, and Ian K. Patel, Attorney, Division of Market Regulation, Commission on August 26, 2003.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

approves the loan in writing. The five types of permissible lending arrangements are: (1) The customer is a member of the registered person's immediate family (as defined in the proposed rule); (2) the customer is in the business of lending money; (3) the customer and the registered person are both registered persons of the same firm; (4) the lending arrangements is based on a personal relationship outside of the broker-customer relationship; or (5) the lending arrangement is based on a business relationship outside of the broker-customer relationship.

### III. Summary of Comments

As noted above, the Commission received two comment letters on the proposed rule change.<sup>6</sup> CFP supported the proposal because it would more closely regulate lending arrangements between registered persons and customers.<sup>7</sup> NASAA did not explicitly support or oppose the proposed rule change. However, NASAA endorsed further restrictions on loans between registered persons and customers.<sup>8</sup> According to NASAA, lending arrangements that occur outside standard commercial channels can be problematic. Further, the potential for conflict is particularly great when business associates enter into loan arrangements outside the normal business relationship. NASAA referred to its Statement of Policy that prohibits "the practice of lending or borrowing money or securities from a customer."<sup>9</sup>

In its response letter, NASD stated that proposed NASD Rule 2370 would give its members the ability to prohibit all lending arrangements between their registered persons and customers.<sup>10</sup> However, if permitted, proposed NASD Rule 2370 would establish strict conditions under which such lending arrangements could take place. Firms would be required to have written procedures in place evidencing their customer loan policy and loans would be limited to five permissible types of arrangements, which NASD staff identified as arrangements that might not be problematic because of the relationship between the registered person and the customer. In addition, according to NASD, proposed NASD Rule 2370 provides additional safeguards by establishing a notice and approval requirement. Thus, under proposed NASD Rule 2370, registered persons would be required to give their

firms prior notice of a loan, and firms would be required to pre-approve each loan in writing. These requirements would enable a member, to the extent it permitted these loan arrangements, to assess the nature of each proposed arrangement and decide whether to approve it. They also would enhance NASD's ability to review these arrangements during the examination process.

### IV. Discussion

After careful consideration of the proposed rule change, the comment letters, and NASD's response, 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<sup>11</sup> and, in particular, the requirements of Section 15A of the Act<sup>12</sup> and the rules and regulations thereunder. Specifically, the Commission believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,<sup>13</sup> which, among other things, requires 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.

While the Commission appreciates the concern raised by NASAA, the Commission believes that NASD has proposed sufficient safeguards that would enable members to proscribe customer-broker loans and to monitor and control lending arrangements, if permitted, through the notice and approval process. To the extent that a member decides to permit lending arrangements with customers in the limited circumstances allowed by the proposed rule, the rule would also require members to have written procedures to monitor such arrangements. As a result, the Commission also believes that the proposed rule change should enhance NASD's ability to monitor loans, when permitted, between registered persons and their customers.

The Commission notes that the safeguards provided under the rule, including bringing disciplinary actions for violations of the rule, are in addition to the general powers that NASD has to bring a disciplinary action against a registered person who has entered into an unethical lending arrangement with

a customer under NASD Rule 2110. For example, the notice requirement would place an affirmative obligation on registered persons that could be separately charged in a disciplinary action if not followed. Lastly, the Commission notes that this proposal has no effect on the application of Regulation T to such lending arrangements.<sup>14</sup>

### V. Conclusion

For the foregoing reasons, the Commission finds that the proposal is consistent with the requirements of the Act and rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (File No. SR-NASD-2003-92) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104-13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed

<sup>6</sup> See *supra* note 4.

<sup>7</sup> See CFP Letter.

<sup>8</sup> See NASAA Letter.

<sup>9</sup> *Id.*

<sup>10</sup> See NASD Letter.

<sup>11</sup> In approving this proposed rule change, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78o-3.

<sup>13</sup> 15 U.S.C. 78o-3(b)(6).

<sup>14</sup> See 12 CFR 220.

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

<sup>16</sup> 17 CFR 200.30-3(a)(12)