

approved for 120 days, through January 18, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 00-25023 Filed 9-28-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [to be published]

STATUS: Closed meeting.

PLACE: 450 Fifth Street NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: September 20, 2000.

CHANGE IN THE MEETING: Cancellation of meeting.

The closed meeting scheduled for Wednesday, September 27, 2000 at 11:00 a.m. has been cancelled.

Dated: September 26, 2000.

Jonathan G. Katz,
Secretary.

[FR Doc. 00-25095 Filed 9-26-00; 4:11 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43330; File No. SR-NASD-00-39]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. Relating to an Amendment to Schedule A of the NASD By-Laws for the Timely Filing of Reports, and Amendments to IM-9216, Minor Rule Violation Plan

September 22, 2000.

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 June 20, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been

prepared by NASD Regulation. NASD Regulation amended the proposal on September 5, 2000.³ On September 21, 2000, NASD Regulation again amended the proposal.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

NASD Regulation proposes to amend Schedule A of the NASD By-Laws for the Timely Filing of Reports, and to amend IM-9216, Minor Rule Violation Plan of the Association, to permit the Association to set late fees to encourage the timely filing of reports and to expand the Association's Minor Rule Violation Plan pursuant to SEC Rule 19d-1.⁵ Below is the text of the proposed rule change. Proposed new language is in italics.

* * * * *

Schedule A to the NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of the NASD shall be determined on the following basis:

* * * * *

Section 2—Fees

(a) through (k) No Change.

(l)(1) Unless a specific temporary extension of time has been granted, there shall be imposed upon each member required to file reports, as designated by this paragraph, a fee of \$100 for each day that such report is not timely filed. The fee will be assessed for a period not to exceed 10 business days. Requests for such extension of time must be submitted to the Association at least three business days prior to the due date; and

(2) Any report filed pursuant to this Rule containing material inaccuracies or filed incompletely shall be deemed not to have been filed until a corrected copy of the report has been resubmitted.
(3) List of Designated Reports:

³ See September 1, 2000 letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation to Joseph P. Morra, Special Counsel, Division of Market Regulation, SEC ("Amendment No. 1"). In Amendment No. 1, NASD Regulation made technical, non-substantive changes to the original proposal. In addition, NASD Regulation provided clarifying language to assist in describing the requirements under Rule 1120.

⁴ See September 19, 2000 letter from Gregory J. Dean, Jr., Assistant General Counsel, NASD Regulation to Joseph P. Morra, Special Counsel, Division of Market Regulation, SEC ("Amendment No. 2"). In Amendment No. 2, NASD Regulation corrected the reference to SEC Rule 19d-1(c)(2) in the title to IM-9216.

⁵ 17 CFR 240.19d-1.

(A) SEC Rule 17a-5—Monthly and quarterly FOCUS reports and annual audit reports.

* * * * *

IM-9216. Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2)

- Rule 2210(b) and (c) and Rule 2220(b) and (c)—Failure to have advertisement and sales literature approved by a principal prior to use; failure to maintain separate files of advertisements and sales literature containing required information; and failure to file advertisements with the Association within the required time limits.

- Rule 3360—Failure to timely file reports of short positions on Form NS-1.

- Rule 3110—Failure to keep and preserve books, accounts, records, memoranda, and correspondence in conformance with applicable laws, rules, regulations and statements of policy promulgated thereunder, and with the Rules of the Association.

- Rule 8211, Rule 8212, and Rule 8213—Failure to submit trading data as requested.

- Article IV of the NASD By-Laws—Failure to timely submit amendments to Form BD.

- Article V of the NASD By-Laws—Failure to timely submit amendments to Form U-4.

- Rule 1120—Failure to comply with continuing education requirements.

- Rule 3010(b)—Failure to timely file reports pursuant to the Taping Rule.

- Rule 3070—Failure to timely file reports.

- Rule 4619(d)—Failure to timely file notifications pursuant to SEC Regulation M.

- Rules 4632, 4642, 4652, 6240, 6420, 6550, 6620, And 6720—Transaction reporting in equity, convertible debt, and high yield securities.

- Rules 6130 and 6170—Transaction reporting to the Automated Confirmation Transaction Service ("ACT").

- Rule 6953—Synchronization of member business clocks.

- Rules 6954 and 6955—Failure to submit data in accordance with the Order Audit Trail System ("OATS").

- Rule 11870—Failure to abide by Customer Account Transfer Contracts.

- SEC Exchange Act Rule 11Ac1-4—Failure to properly display limit orders.

- SEC Exchange Act Rule 11Ac1-1(c)(5)—Failure to properly update published quotations in certain Electronic Communication Networks ("ECN's").

- SEC Exchange Act Rule 17a-5—Failure to timely file FOCUS reports.

- SEC Exchange Act Rule 17a-11—Failure to timely file net capital reports.

- MSRB Rule A-14—Failure to pay annual fee.

- MSRB Rule G-12—Failure to abide by uniform practice rules.

- MSRB Rule G-14—Failure to submit reports.

- MSRB Rule G-36—Failure to timely submit reports.

- MSRB Rule G-37—Failure to timely submit reports for political contributions.

- MSRB Rule G-38—Failure to timely submit reports detailing consultant activities.

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¹¹ 17 CFR 200.30-3(a)(29).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Regulation 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 Regulation 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

In 1999, the Association considered and implemented a number of significant sanction-related policies with respect to formal disciplinary actions.⁶ These policies were implemented in response to a request from members for alternative mechanisms to achieve regulatory compliance in an effective and efficient manner. Citing the time and cost of defending disciplinary actions and the consequences of reporting such violations, member firms have asked whether certain situations, such as technical or minor violations, might be better addressed through alternative approaches. In response, the NASD proposes to amend Schedule A of the NASD By-Laws to establish late fees for designated filings and reports, and to amend the list of violations for the Association's Minor Rule Violation Plan set forth in IM-9216. These changes will allow the Association greater flexibility in obtaining compliance with violations considered to be technical in nature, without having to file complaints and hold hearings under the disciplinary procedures.

Late Fees. Proposed amendments to Schedule A of the NASD By-Laws would adopt a late fee for certain filings and reports designated by the Association. The late fees would be assessed on a per-day basis for a period of no more than 10 business days. The fees would be administrative rather than disciplinary in nature, and will help assist Association staff in achieving members' compliance. Where the late filing is serious, the institution of a

suspension or disciplinary proceedings will be more appropriate.

Because the late fees would be assessed on a per-day basis, the total dollar amount of a late filing fee would increase for each day the filing is filed past the deadline. In those instances where the member knows it is unable to meet a filing deadline (*e.g.*, technical difficulties, third party contractor delays, auditor delays, and other types of delays outside the control of the member), the member may apply before the deadline for an extension. In addition, inaccurate or incomplete filings will not be deemed filed until they are correctly submitted. Once the Association determines a late fee is due, the Association will send notice of the late fee to the member after the document has been correctly filed, or after 10 business days have past. When the notice has been sent, the late fee will be automatically deducted from the member's Central Registration Depository Account.

The Association believes that the implementation of late fees would be an additional incentive for members to comply with filing requirements. Because the Association would not commence disciplinary proceedings except in serious cases, members benefit by not having to expend the time and expense of defending those actions. The administrative cost to the Association to compel compliance by those who miss the filing deadlines will be borne by the members who file reports late.

Minor Rule Violation Plan. In 1984, the SEC adopted amendments to Rule 19d-1(c) under the Act⁷ to allow self-regulatory organizations to adopt, with SEC approval, Minor Rule Violation Plans.⁸ In 1993, pursuant to Exchange Act Rule 19d-1(c)(2),⁹ the NASD established a Minor Rule Violation Plan ("Plan").¹⁰ NASD Rule 9216(b) provides that the Association may impose a fine and/or a censure, not to exceed \$2,500, on any member or associated person for a minor violation of certain specified Association rules contained in IM-9216.¹¹ The purpose of NASD Rule 9216(b) is to provide for a meaningful sanction for a rule violation when the

initiation of disciplinary proceeding through the formal complaint process would be more costly and time-consuming than would be warranted, given the minor or technical nature of the violation. In addition, the Rule provides an efficient, alternative means by which to deter violations of rules while maintaining procedural rights for disciplined persons. Inclusion of a rule in the Association's Plan should not be interpreted to mean it is an unimportant rule; rather, the technical violation of the rule may be appropriate for disposition under the Plan. The Association retains this discretion to bring full disciplinary proceedings for any violation included in the Plan, including situations where the violation is egregious or where there is a history or pattern of repeat violations.

In SR-NASD-93-06, which initially set forth the provisions and procedures of NASD Rule 9216(b), the Association indicated that it would amend the list of rules from time to time, as it considered appropriate, to phase in the implementation of NASD Rule 9216(b). At this time the Association proposes to amend IM-9216 to expand the list of minor rule violations in the Plan that would be appropriate for disposition under NASD Rule 9216(b). The Association proposes to assess fines not to exceed \$2,500 for violations by individuals, and not to exceed \$5,000 for violations by member firms. The number and seriousness of the violations, and the previous disciplinary history of the respondent will be reviewed to determine the amount of the fine for a minor rule violation. Once the Association has brought a minor rule violation against an individual or member firm, the Association may, at its discretion, issue progressively higher fines for all subsequent minor rule violations within the next 24-month period.

Description of Proposed Additions to the Minor Rule Violation Plan. A discussion of the NASD's rationale for including each of the violations, and the limitations on the eligibility of such violations for disposition under the Plan, follows:

Article IV of NASD By-Laws-Failure to timely submit amendments to Form BD. Members are required pursuant to Article IV, Section (c) of the NASD By-Laws to ensure that their membership applications are kept current at all times through amendments to Form BD. All such amendments must be filed with the NASD no later than 30 days after learning of facts or circumstances giving rise to an amendment. The Association believes that the failure to amend Form BD in a timely manner by a member

⁷ 17 CFR 240.19d-1(c)(2).

⁸ See Securities and Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23833 (June 8, 1984).

⁹ 17 CFR 240.19d-1(c)(2).

¹⁰ See Securities Exchange Act Release No. 32076 (March 31, 1993), 58 FR 18291 (April 8, 1993) (SR-NASD-93-06). See also *Notice to Members 93-42* (July 1993) (SEC Approves NASD's Minor Rule Violation Plan).

¹¹ Recently, the NASD has decided not to impose censures for certain violations when monetary sanctions of \$5,000 or less are imposed. See *Notice to Members 99-59* (July 1999) (NASD Will No Longer Impose Censures for Some Violations).

⁶ See *Notice to Members 99-50* (July 1999) (NASD Will No Longer Impose Censures for Some Violations); *Notice of Members 99-86* (October 1999) (NASD Regulation Adopts Policy Regarding Imposition And Collection of Monetary Sanctions).

firm may be appropriate for disposition as a minor rule violation.

Article V of NASD By-Laws-Failure to timely submit amendments to Form U-4. All registered representatives and associated persons are required pursuant to Article V, Section 2(c) of the NASD By-Laws to ensure that their applications are kept current at all times through amendments to Form U-4. All such amendments must be filed with the NASD no later than 30 days after learning of facts or circumstances giving rise to an amendment. In addition, registered representatives and associated persons are required to file amendments to Form U-4 if they become statutorily disqualified as defined in Section 3(a)(39)¹² and Section 15 (b)(4)¹³ of the Act. All amendments pursuant to statutory disqualification must be filed no later than ten days after such disqualification occurs. The Association believes that the failure to amend Form U-4 in a timely manner by a registered representative or an associated person may be appropriate for disposition as a minor rule violation.

Rule 1120—Failure to maintain continuing education requirements, regulatory and firm elements. Regulatory Element. NASD Rule 1120(a) requires members to oversee the continuing education requirements of the “registered persons”¹⁴ and to ensure that such persons do not continue acting in a registered capacity if they do not complete the requirements. The Regulatory Element of the continuing education requirements requires that each registered person, who is not considered exempt from the rule, shall complete the Regulatory Element, as established by the member, on three occasions after the occurrence of their second registration anniversary and every three years thereafter. On each occasion, the training must be completed within 120 days after the registered person’s anniversary date. A registered person will be in violation of Rule 1120(a) if the person has not completed the Regulatory Element within the prescribed time periods, and will be deemed to be inactive until the Regulatory has been fulfilled.

The member firm will be considered to be in violation of the Regulatory Element if a registered person of the member firm does not complete the Regulatory Element requirements, and the member firm permits a registered

person to continue to perform duties, despite the fact that the registered person has not completed the Regulatory Element requirements. *Firm Element.* NASD Rule 1120(b) requires members to establish, maintain, evaluate and update continuing education programs for members and their “covered registered persons.”¹⁵ Specifically, the Firm Element of the continuing education requirement requires that each member firm develop continuing and current education programs for covered persons to enhance their securities knowledge, skill, and professionalism. The programs must be held annually, and must take into consideration each member’s size, organizational structure, and scope of business activities, as well as regulatory developments and the performance of covered persons in the Regulatory Element. At a minimum, the programs must include: general investment features and associated risk factors; suitability and sales practice considerations; and applicable regulatory requirements. A covered registered person would be in violation of the Firm Element if the person fails to participate in the firm’s educational programs.

A member firm would violate the Firm Element of Rule 1120 if the firm fails to take all appropriate and reasonable steps to ensure that its covered registered persons participate in a continuing education program of the member; the firm fails to adequately ensure that covered registered persons participate in educational programs; the firm fails to evaluate and prioritize its training needs annually, and to update its written training plan when necessary; and the firm fails to maintain appropriate record for a written training plan.

Rule 3010(b)—Failure to timely file reports pursuant to the Taping Rule. NASD Rule 3010(b)(2)(vii) requires members subject to the taping requirements of the Rule to file quarterly reports that detail the member’s supervision of the telemarketing activities of its registered persons. Members who fail to file reports in a timely manner may be subject to a minor rule violation.

Rule 3070—Failure to timely file reports. NASD Rule 3070 requires member firms to file a report with the Association when any of 10 specified events occur. These events may vary

significantly, ranging from situations where a court, government agency, or self-regulatory organization has determined there has been a violation of the securities laws, to circumstances where a firm has received a written customer complaint alleging theft, misappropriation of funds or securities, or forgery. Member firms are required to report such events within 10 business days after the member knows, or should have known, of the existence of the event. In addition, member firms are required to collect and report statistical and summary information regarding customer complaints by the 15th of the month following the calendar quarter in which the customer complaints are received by the member. Members who fail to file reports in a timely manner may be subject to a minor rule violation.

Rule 4619(d)—Failure to timely file reports pursuant to SEC Regulation M. NASD Rule 4619(d) requires member firms to file certain notifications with the NASD to comply with SEC Regulation M,¹⁶ and SEC Rules 101,¹⁷ 103,¹⁸ and 104¹⁹ (i.e., notification of withdrawal of quotations and identification of quotations as those of a passive market maker). The failure to timely file such notices may be considered a minor rule violation by the Association.

Rules 4632, 4642, 4652, 6240, 6420, 6550, 6620, and 6720—Transaction reporting in equity, convertible debt, and high yield securities. The Association’s trade reporting rules require member firms to submit reports of transactions in equity, convertible debt, and high yield securities.²⁰ The rules concern trade reporting in certain Nasdaq securities, listed securities (commonly known as the “third market”), OTC equity securities, non-Nasdaq securities, and high yield securities. The Association believes that the failure, in certain circumstances, to report such transaction data pursuant to the requirements of these rules may be appropriate for disposition as a minor rule violation.

Rules 6130 and 6170—Transaction reporting to the Automated Confirmation Transaction Service (“ACT”). NASD Rules 6130 and 6170 require member firms to submit transaction reports of transactions in “ACT Eligible Securities”²¹ to the Automated Confirmation Transaction

¹² 15 U.S.C. 78c(a)(39).

¹³ 15 U.S.C. 78o(b)(4).

¹⁴ “Registered person” means any person registered with the Association as a representative, principal or assistant representative pursuant to Rules 1020, 1030, 1040, and the Rule 1110 Series.

¹⁵ “Covered registered person” means any person registered with a member who has direct contact with customers in the conduct of the member’s securities sales, trading and investment banking activities, and to the immediate supervisors of such persons.

¹⁶ 17 CFR 242.

¹⁷ 17 CFR 242.101.

¹⁸ 17 CFR 242.103.

¹⁹ 17 CFR 242.104.

²⁰ NASD Rules 4632, 4642, 4652, 6240, 6420, 6550, 6620 and 6720.

²¹ NASD Rule 6110(a).

Service ("ACT"). The Association believes that the failure, in certain circumstances, to submit required transaction reports to ACT pursuant to the requirements of these rules may be appropriate for disposition as a minor rule violation.

Rules 6953—Synchronization of member business clocks. NASD Rule 6953 requires member firms to synchronize all computer and mechanical time-stamping devices to be within three seconds of the National Institute of Standards and Technology standard. The Association believes that the failure by a member firm to synchronize its time-stamping devices may be appropriate for disposition as a minor rule violation.

Rules 6954 and 6955—Failure to submit data in accordance with the Order Audit Trail System ("OATS"). The OATS rules impose obligations on member firms to record in electronic form and to report to NASD Regulation certain items of information with respect to orders they receive to effect transactions in equity securities traded in The Nasdaq Stock Market. The OATS rules require that each member receiving an order relating to equity securities traded in the Nasdaq Stock Market must capture specific information and electronically transmit this information to OATS. The Association believes that violations under the OATS rules may be appropriate for disposition as a minor rule violation.

Rule 11870—Failure to abide by Customer Account Transfer Contracts. NASD Rule 11870 requires members to follow procedures for the transfer or closing-out of customer accounts with the Automated Customer Account Transfer System ("ACATS"). The Rule requires members to validate or object to a customer account transfer within three days of receipt of the transfer notice. Members must complete the transfer within four days of validation. Failure to transfer the customer account with the stated time or failure to properly transfer a customer account may be appropriate for disposition as a minor rule violation.

SEC Rule 11Ac1-4—Failure to properly display limit orders. SEC Rule 11Ac1-4²² requires, subject to certain exceptions, a registered broker or dealer that acts as an OTC market maker to "immediately" display qualifying customer limit orders in its published quotes. Failure to immediately display qualifying limit orders pursuant to SEC

Rule 11Ac1-4 may be appropriate for disposition as a minor rule violation.

SEC Rule 11Ac1-1(c)(5)—Failure to properly update published quotations in certain Electronic Communication Networks ("ECN's"). SEC Rule 11Ac1-1(c)(5)²³ requires an OTC market maker to update its published quotation to reflect qualifying priced orders that it enters into a specific type of Electronic Communication Network ("ECN"). The failure to display such priced orders pursuant to SEC Rule 11Ac1-1(c)(5) may be considered a minor rule violation by the Association.

SEC Rule 17a-5—Failure to timely file FOCUS reports. The Association proposes to institute minor rule violations for failure of a member to timely file monthly, quarterly and annual reports required by SEC Rule 17a-5,²⁴ also known as FOCUS reports. Reports not filed in a timely manner may be appropriate for disposition as a minor rule violation.

SEC Rule 17a-11—Failure to timely file net capital reports. SEC Rule 17a-11²⁵ requires members to file reports if their net capital falls below a certain level as defined in SEC Rule 15c3-1,²⁶ or in other instances that indicate the existence of financial or operational difficulties. The Association believes that the failure to timely file the reports may be appropriate for disposition as a minor rule violation.

MSRB Rule A-14—Failure to pay annual fee. MSRB Rule A-14 requires each broker, dealer and municipal securities dealer to pay an annual fee to the MSRB Board in each fiscal year in which the broker, dealer and municipal securities dealer conducts municipal securities activities. The fee must be received by the Board no later than October 31 of the fiscal year in which the fee is due. Failure to pay the annual fee may be considered by the Association to be a minor rule violation.

MSRB Rules G-12 and G-14—Failure to Report Transactions or Inaccurate Reporting of Transactions. MSRB Rule G-14, in part, requires the accurate and timely reporting of each transaction in municipal securities. The Association believes that failure to report transactions may be appropriate for disposition as a minor rule violation. In addition, inaccurate and/or untimely transaction reporting is measured and assessed based on the following benchmarks, which are derived from industry compliance statistics:

- National Securities Clearing Corporation "T-Input Percentage." An industry goal is a T-Input Percentage of 95 percent.

- Effecting Broker Symbol ("EBS") percentage. For the past six months, the industry EBS compliance percentage has been over 99 percent.

- Customer Trade Ineligibility ("CTI") percentage. For the past year, the industry CTI percentage has been about ten percent.

The Association believes that inaccurate or untimely transaction reporting under these rules may be appropriate for disposition as a minor rule violation. More significant non-compliance with MSRB Rule G-14 is generally evident in instances when the T-Input Percentage is below 90 percent for a 6-month period, or for EBS and CTI, when firm non-compliance statistics are 5 percent or more below the industry average for a 6-month period. In these instances, formal complaint proceedings may be brought by the Association. Subsequent non-compliance using these criteria would warrant a formal complaint.

MSRB Rule G-36—Failure to timely submit reports. MSRB Rule G-36 concerns the delivery of Official Statements, Advance Refunding Documents and Forms G-36(OS) and G-36(ARD) to the MSRB. MSRB Rule G-36, in part, requires the sending—within certain specified time frames—of two copies of certain issuer documents to the MSRB. Failure to file Form G-36(OS) or G-36(ARD) within the published time frames may be appropriate for disposition as a minor rule violation.

MSRB Rule G-37—Failure to timely submit reports for political contributions and MSRB Rule G-38—Failure to timely submit reports detailing consultant activities. MSRB Rules G-37 and G-38 require, in part, the disclosure on MSRB Form G-37/38 of certain political contributions, solicitation of municipal securities business, and the use of consultants by municipal securities dealers. Due dates for these required disclosures are January 31, April 30, July 31, and October 31. The late filing of reports pursuant to MSRB Rules G-37 and G-38 may be appropriate for disposition as a minor rule violation.

In addition, form filings that are incomplete or inaccurate, or inaccurate record keeping as required under MSRB Rules G-37 and G-38, may also be appropriate for disposition by the Association as minor rule violations.

²³ 17 CFR 240.11Ac1-1(c)(5).

²⁴ 17 CFR 240.17a-5.

²⁵ 17 CFR 240.17a-11.

²⁶ 17 CFR 240.15c3-1.

²² 17 CFR 240.11Ac1-4.

2. Statutory Basis

NASD Regulation believes that the proposal is consistent with the provisions of Section 15A(b)(6) of the Act,²⁷ which requires, among other things, that the Association'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 Regulation believes that the proposed rule change is consistent with Section 15A(b)(7) of the Act,²⁸ in that it is intended to safeguard the interests of investors while establishing fair and reasonable rules for its members and persons associated with its members. NASD Regulation also believes that the proposed rule change is consistent with Section 15A(b)(8) of the Act,²⁹ in that it furthers the statutory goals of providing a fair procedure for disciplining members and associated persons.

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

NASD Regulation 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.

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 NASD 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 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 NASD. All submissions should refer to file number SR-NASD-00-39 and should be submitted by October 20, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.³⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43319; File No. SR-NASD-00-20]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend the Three Quote Rule for Transactions in Non-Nasdaq Securities

September 21, 2000.

I. Introduction

On April 13, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, NASD Regulation, Inc. ("NASD Regulation"), 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-4² thereunder, a proposed rule change that amends the Three Quote Rule for transactions in non-Nasdaq securities and its corresponding recordkeeping provision. The proposal was published for comment in the **Federal Register** on June 25, 2000.³ The Commission

received no comments on the proposal. This order approves NASD Regulation's proposed rule change.

II. Description of the Proposal

NASD Regulation has proposed three amendments to the NASD's rules.

First NASD Regulation has proposed to amend NASD Rule 2320(g)—commonly known as the "Three Quote Rule"—to relieve members of the current obligation to obtain three quotes for a transaction in a non-Nasdaq security⁴ when there are two or more priced quotations for that security displayed in an inter-dealer quotation system (such as the OTC Bulletin Board ("OTCBB") or the Electronic Quotation Service operated by Pink Sheets LLC ("Pink Sheets")) that permits quotation updates on a real-time basis.

Currently, the rule requires members that execute a transaction in a non-Nasdaq security on behalf of a customer to contact and obtain quotations from three dealers (or all dealers if three or less) to determine the best inter-dealer market for that security.⁵ The intent of the Three Quote Rule is to help ensure that members fulfill their responsibilities to customers to provide best execution for transactions in non-Nasdaq security, particularly illiquid securities with non-transparent prices.

NASD Regulation now believes that the existing Three Quote Rule often hinders, rather than furthers, investor protection by causing significant delays in obtaining executions of customer orders. Therefore, NASD Regulation is proposing that Rule 2320(g) be amended to require that members obtain quotations from three dealers (or all dealers if three or less) only when there are fewer than two priced quotations displayed in an inter-dealer quotation system that permits quotation updates on a real-time basis (such as the OTCBB or the Pink Sheets).⁶

Second, NASD Regulation has proposed to amend one of its recordkeeping requirements for members to correspond with the proposed amendment to the Three Quote Rule. Currently, NASD Rule

⁴ A non-Nasdaq security is any equity security that is neither included in the Nasdaq Stock Market nor traded on a national securities exchange. See NASD Rule 6710(c).

⁵ Currently, if three firm quotations are displayed, a broker-dealer is not required to call the three market makers to verify the firm quotations that are displayed on the screen. A broker-dealer need note on the order ticket only the identity of the broker-dealers and the firm quotations displayed.

⁶ The proposed rule change defines the term *inter-dealer quotation system* as any system of general circulation to brokers or dealers that regularly disseminates quotations of identified brokers or dealers.

³⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 42958 (June 20, 2000), 65 FR 39457.

²⁷ 15 U.S.C. 78o-3(b)(6).

²⁸ 15 U.S.C. 78o-3(b)(7).

²⁹ 15 U.S.C. 78o-3(b)(8).