

policies and procedures with respect to: (1) Safeguarding of customer funds and securities; (2) maintaining books and records; (3) supervision of customer accounts serviced by branch office managers; (4) transmittal of customer funds; (5) validation of customer address changes; and (6) validation of changes in customer account information.

The NASD recognizes that it may not be practical for members with small offices to conduct an independent inspection. In this regard, the proposed rule change would allow the NASD to exempt members pursuant to the NASD Rule 9600 Series from the independence requirement in the inspection of a member's office.

#### *Discretionary Authority*

NASD Rule 2510(d)(1) allows members to exercise time-and-price discretion on orders for the purchase or sale of a definite amount of a specified security without prior written authorization from the customer or prior written approval by the member, but does not specify the duration of such discretionary authority. The proposed rule change would clarify that a firm's authority to exercise time and price discretion terminates at the end of the business day on which the customer granted such discretion, unless a signed authorization from the customer shows otherwise. The proposed rule change would further require any exercise of time or price discretion to be reflected on the order ticket.

#### *Changes in Customer Account Name or Designation*

Because changes in account names or designations in connection with order executions can be subject to abuse, the NASD believes that such changes should be approved by a qualified person and the basis for the change should be adequately documented. The proposed rule change would specify that no changes to the account name(s) or designation(s), including related accounts or error accounts may be made unless previously authorized by the person designated to approve such changes. Such designated person would be required to pass a qualifying principal examination appropriate to the business of the firm, such as the General Securities Sales Supervisor (Series 9/10) or General Securities Principal (Series 24). The designated person must document the essential facts relied upon in approving the changes and maintain the record in a central location.

#### *Customer Mail*

To prevent improper mail delivery if a customer is away from his or her regular address for an extended period of time, the proposed rule change would allow members to hold mail for a customer upon receiving written instructions from the customer, not to exceed two months if the customer is on vacation or traveling or three months if the customer is going abroad.

#### 2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,<sup>5</sup> 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. The NASD believes that the proposed rule change is designed to accomplish these ends by requiring members to establish more extensive supervisory and supervisory control procedures to monitor customer account activities of its employees and thereby reduce the potential for customer fraud and theft.

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

The 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.

#### **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 self-regulatory organization 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.

<sup>5</sup> 15 U.S.C. 78o-1(b)(6).

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule 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 the File No. SR-NASD-2002-162 and should be submitted by December 18, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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

[Release No. 34-46862; File No. SR-NASD-2002-129]

#### **Self Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Security Futures Risk Disclosure Statement**

November 20, 2002.

On September 25, 2002, 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 relating to the Security Futures Risk Disclosure Statement. The proposed rule change was published for comment in the **Federal Register** on October 17, 2002.<sup>3</sup>

<sup>6</sup> 17 CFR 200.30-3(a)(12).

<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. 46614 (October 7, 2002), 67 FR 64162.

Commission received no comments on the proposal.

In addition, on September 25, 2002, NASD submitted a separate proposed rule change relating to the Security Futures Risk Disclosure Statement (File No. SR-NASD-2001-28). At NASD's request, the Commission put that proposed rule change into effect summarily pursuant to section 19(b)(3) of the Act,<sup>4</sup> so that the Security Futures Risk Disclosure Statement would be in effect prior to the start of trading in security futures.<sup>5</sup> Section 19(b)(3) of the Act<sup>6</sup> requires that any proposed rule change put into effect summarily shall be filed promptly thereafter in accordance with the provisions of section 19(b)(1) of the Act.<sup>7</sup> Accordingly, NASD filed this proposed rule change to gain final approval of the Security Futures Risk Disclosure Statement.

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>8</sup> In particular, the Commission finds that the proposal is consistent with the requirements of section 15A(b)(6) of the Act,<sup>9</sup> which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. Under NASD's rules, the Security Futures Risk Disclosure Statement must be provided to customers at or prior to the time the customer's account is approved for trading security futures. Among other things, the statement describes the risks of security futures, how they trade, margin, effects of leverage, settlement procedures, customer account protections, and the tax consequences of trading security futures. Accordingly, the Commission believes that the Security Futures Risk Disclosure Statement should inform customers that trade security futures of the characteristics of security futures and the risks associated with trading them.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act<sup>10</sup>, that the proposed rule change (File No. SR-

NASD-2002-129) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46858; File No. SR-NYSE-2002-36]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Adopt Amendments to Exchange Rule 342 ("Offices—Approval, Supervision and Control") and its Interpretation, Rule 401 ("Business Conduct"), Rule 408 ("Discretionary Power in Customers' Accounts"), and Rule 410 ("Records of Orders")

November 20, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 16, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 the self-regulatory organization.<sup>3</sup> On November 20, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>4</sup>

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change is intended to address several issues involving the

establishment, maintenance, and testing of Internal Controls as well as several supervisory issues. Included are amendments to Rule 342 ("Offices—Approval, Supervision and Control") and its Interpretation, 401 ("Business Conduct"), 408 ("Discretionary Power in Customers' Accounts"), and 410 ("Records of Orders"). Additions are in italics; deletions are in brackets.

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#### Offices—Approval, Supervision and Control

Rule 342. (a) Each office, department or business activity of a member or member organization (including foreign incorporated branch offices) shall be under the supervision and control of the member or member organization establishing it and of the personnel delegated such authority and responsibility.

The person in charge of a group of employees shall reasonably discharge his duties and obligations in connection with supervision and control of the activities of those employees related to the business of their employer and compliance with securities laws and regulations.

(b) The general partners or directors of each member organization shall provide for appropriate supervisory control and shall designate a general partner or principal executive officer to assume overall authority and responsibility for internal supervision and control of the organization and compliance with securities' laws and regulations. This person shall:

(1) delegate to qualified principals or employees responsibility and authority for supervision and control of each office, department or business activity, and provide for appropriate procedures of supervision and control.

(2) establish a separate system of follow-up and review to determine that the delegated authority and responsibility is being properly exercised.

(c) The prior consent of the Exchange shall be obtained for each office established by a member or member organization, other than a main office.

(d) Qualified persons acceptable to the Exchange shall be in charge of:

(1) any office of a member or member organization,

(2) any regional or other group of offices,

(3) any sales department or activity.

(e) The amounts and types of credit extended by a member organization shall be supervised by members or allied members qualified by experience for such control in the types of business

<sup>4</sup> 15 U.S.C. 78s(b)(3).

<sup>5</sup> See Securities Exchange Act Release No. 46612 (October 7, 2002), 67 FR 64151.

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

<sup>7</sup> 15 U.S.C. 78(s)(b)(1).

<sup>8</sup> 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).

<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

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

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(2).

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

<sup>3</sup> The NASD submitted a proposed rule change addressing internal controls and supervisory issues (SR-NASD-2002-162), which the Commission is publishing in the *Federal Register* for public comment simultaneously with the instant proposed rule change. See Securities Exchange Act Release No. 46859 (November 20, 2002).

<sup>4</sup> See letter to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, from Darla Stuckey, Corporate Secretary, NYSE, dated November 18, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange added "customer changes of investment objectives" to the list of enumerated activities with regard to which Exchange members must maintain written policies and procedures.