

available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–03 and should be submitted by March 31, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–5570 Filed 3–7–03; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47434; File No. SR–NASD–2002–112]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc., To Amend NASD Rule 3070 To Require Members To File Copies of Criminal and Civil Complaints and Arbitration Claims With NASD

March 3, 2003.

#### I. Introduction

On August 15, 2002, the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change 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> to amend Rule 3070 of its rules to require members promptly to file copies with NASD of certain criminal and civil complaints and arbitration claims against a member or a person associated with a member. NASD amended the proposed rule change on December 9, 2002.<sup>3</sup> Notice of the proposed rule change and Amendment No. 1 thereto was published for comment in the *Federal Register* on December 27, 2002.<sup>4</sup>

The Commission received five comment letters regarding the proposal.<sup>5</sup> On February 12, 2003, NASD

filed a response to the comment letters.<sup>6</sup> This order approves the proposed rule change as amended by Amendment No. 1.

#### II. Description of the Proposal

The proposed rule change amends NASD Rule 3070 to require members to file promptly with NASD copies of certain criminal and civil complaints and arbitration claims against the member or a person associated with the member. The purpose of the rule proposal is to improve the quality and flow of information to NASD with respect to allegations of broker misconduct, so that NASD can enhance investor protection efforts by promptly taking appropriate regulatory action to address the specific alleged misconduct and to prevent similar or related misconduct in the future.

Specifically, the proposed rule change requires members to file with NASD copies of (1) any criminal complaints filed against the member or plea agreements entered into by the member that are covered by the rule; (2) any securities or commodities-related private civil complaints filed against the member; (3) any arbitration claim against the member (except those claims that have already been filed with NASD Dispute Resolution, in which case NASD obtains copies of such claims directly from NASD Dispute Resolution); and (4) any criminal complaint or plea agreement, private civil complaint or arbitration claim against an associated person that is reportable under question 14 on Form U–4, irrespective of any dollar threshold requirements that question imposes for

notification (except those arbitration claims that have already been filed with NASD Dispute Resolution). To avoid duplicative filing, the rule proposal also provides that members need not separately produce the above-referenced documents if they have already been the subject of a request by NASD’s Registration and Disclosure staff. These amendments are discussed in greater detail in the Commission’s notice soliciting public comment on this proposal.<sup>7</sup>

#### III. Summary of Comments

The Commission received five comment letters on the proposed rule change.<sup>8</sup> Although four of the commenters generally supported NASD’s desire to obtain and collect information regarding broker misconduct, they each contended that the proposal was unduly burdensome for members and offered alternative suggestions for achieving NASD’s stated objectives.<sup>9</sup> The fifth comment letter was written in response to the SIA Letter and in support of the proposed rule change.<sup>10</sup> World Group and A.G. Edwards stated that NASD would be unduly burdened by the volume of documents it would receive compared to the amount of new relevant information. MetLife and the SIA stated that the proposal was inconsistent with NASD’s rule modernization initiative, which seeks to streamline NASD rules by maximizing regulatory efficiency while imposing the least regulatory burden.<sup>11</sup>

In its response to commenters, NASD focused only on comments made in connection with this proposal. The World Group, MetLife and A.G. Edwards Letters also addressed a change in NASD’s policy regarding letters NASD issues when a determination is made to close an investigation without disciplinary action (referred to as “close-out letters”). While notice of the policy change with respect to close-out letters was contained in the same *Notice to Members* 02–53 that announced that NASD had filed with the SEC its proposal to amend Rule 3070, that policy change is not part of this rule filing. Accordingly, this order does not address the policy change with respect to close-out letters.

NASD disagrees that the proposal would impose duplicative filing requirements on members or be unduly

<sup>13</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 letter from Patrice Gliniecki, Vice President and Deputy General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 6, 2002, and enclosures (“Amendment No. 1”). Amendment No. 1 replaced the original rule filing in its entirety.

<sup>4</sup> See Securities Exchange Act Release No. 47060 (December 20, 2002), 67 FR 79203.

<sup>5</sup> See letter from Kevin L. Palmer, Legal Department, World Group Securities, Inc. (“World Group”), to Jonathan G. Katz, Secretary, Commission, dated September 19, 2002 (“World Group Letter”) (World Group commented on NASD

*Notice to Members* 02–53 concerning the proposed amendment to NASD Rule 3070 prior to the Commission’s publication of the proposed rule filing); letter from Marc A. Cohn, Assistant Vice President, Metropolitan Life Insurance Company (“MetLife”), to Jonathan G. Katz, Secretary, Commission, dated December 27, 2002 (“MetLife Letter”); letter from Stephen G. Sneeringer, Senior Vice President & Counsel, A.G. Edwards & Sons, Inc. (“A.G. Edwards”), to Jonathan G. Katz, Secretary, Commission, dated January 17, 2003 (“A.G. Edwards Letter”); letter from Edward Turan, Chairman, Arbitration Committee, Securities Industry Association (“SIA”) and John Polanin, Jr., Chairman, Self-Regulation and Supervisory Practices Committee, SIA, to Jonathan G. Katz, Secretary, Commission, dated January 24, 2003 (“SIA Letter”), and letter from David A. Weintraub, Attorney at Law, David A. Weintraub, P.A. (“Weintraub”), to Jonathan G. Katz, Secretary, Commission, dated February 6, 2003 (“Weintraub Letter”). The comment letters are described in Section III, *infra*.

<sup>6</sup> See letter from Philip A. Shaikun, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated February 11, 2003 (“NASD Response Letter”). The NASD Response Letter does not respond to the Weintraub Letter because the Weintraub Letter was received by the Commission after NASD filed the NASD Response Letter.

<sup>7</sup> See *supra*, note 4.

<sup>8</sup> See *supra*, note 5.

<sup>9</sup> See World Group Letter, MetLife Letter, A.G. Edwards Letter and SIA Letter.

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

<sup>11</sup> See *Special NASD Notice to Members* 01–35.