

plan of a parent corporation that addresses its subsidiary member firms. As a result, a subsidiary member firm could rely on the corporate-wide business continuity plan of its parent corporation, regardless of whether the parent corporation is a member or non-member. The Original Notice, however, stated that the parent corporation's business continuity plan would have to comply fully with proposed NASD Rule 3510 and address all requirements under the proposed rule. In addition, it noted that the parent and subsidiary corporations would both be required to comply with NASD rules on recordkeeping and supervision for purposes of proposed NASD Rule 3510, and that the parent corporation would be required to grant NASD access to its business continuity plan upon request.

One commenter believed that it would not be appropriate to subject non-member firms to these NASD requirements, nor would it be necessary. The NASD, however, believes that, if a member chooses to participate in a parent company's corporate-wide business continuity plan, the record-keeping of that plan and any supervision of the creation, execution, or updating of that plan must comply with NASD rules on record-keeping and supervision. Participating in a corporate-wide business continuity plan is merely an alternative and is intended to give firms greater flexibility in complying with the proposed rule.

#### Senior Management Approval

The NASD is proposing to amend the text of proposed NASD Rule 3510 to include new subsection (d) to conform the NASD's proposed rule with the NYSE's proposed business continuity rule.<sup>10</sup> The NASD agrees with the requirement set forth in the NYSE proposal that a member of senior management and a registered principal should approve a member's business continuity plan, including any updates to the plan, to ensure that the creation and maintenance of any plan is reviewed and approved by persons with appropriate expertise and seniority.

#### Emergency Contact Information

Proposed NASD Rule 3520 would require members to provide the NASD with emergency contact information and update any information upon the occurrence of a material change. One commenter suggested that the NASD take a proactive role in gathering emergency contact information. As

stated in the Original Notice, the NASD believes that this duty should lie with the member firm because the member will be best able to identify when a material change has taken place. Nevertheless, the NASD in Amendment No. 1 proposed to revise proposed Rule 3520(b) to require members to promptly update any changes to their emergency contact information. In addition, the NASD is eliminating the semi-annual update requirement from the rule text. Rather, to be consistent with other contact information required by the NASD and periodic updates required by the NYSE, the NASD will issue future guidance on a periodic update requirement. The NASD also is amending proposed NASD Rule 3520(a) to include the phrase "[a]mong other things" to emphasize that the NASD is requiring other contact information in addition to designating two emergency contact persons.

#### 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.

#### 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 NASD. All submissions should refer to File No. SR-NASD-2002-108 and should be submitted by March 31, 2003.

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. 34-47435; File No. SR-NASD-2002-168]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Proposed Rule 2130 Concerning the Expungement of Customer Dispute Information From the Central Registration Depository System

March 4, 2003.

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> notice is hereby given that on November 19, 2002, the National Association of Securities Dealers, Inc. ("NASD") 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 NASD. NASD amended the proposed rule change on January 28, 2003.<sup>3</sup> The Commission is publishing this notice to solicit

<sup>11</sup> 17 CFR 200.3-3(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, dated January 28, 2003, from Patrice M. Gliniecki, Vice President and Deputy General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, NASD modified the proposed rule text to clarify that the requirements of paragraph (b) are to apply only in such cases when the NASD has not otherwise waived such requirements. In addition, Amendment No. 1 added language to the Purpose section to clarify that, pursuant to the rule, the NASD will participate in such judicial proceedings and generally oppose expunging dispute information and also to clarify that the NASD retains the discretion not to oppose expungement. Amendment No. 1 also clarifies that application of the proposed rule will apply to customer dispute information only and not apply to other expungement directives (e.g., related to certain criminal information and certain defamatory information). Finally, Amendment No. 1 explains that NASD Dispute Resolution will draft training materials for arbitrators regarding the standards upon which an arbitration award, directing expungement, may be confirmed by a court.

<sup>10</sup> See Securities Exchange Act Release No. 46443 (August 30, 2002), 67 FR 57264 (September 9, 2002) (SR-NYSE-2002-35).