

proposes to retain the “defamatory in nature” standard proposed in NtM 01–65. Although this standard was the subject of many comments, it has been used successfully in the arbitration forum in registered representative/member firm arbitrations, and NASD believes that it is appropriate as proposed.

NASD proposed in NtM 01–65 to limit expungement relief in stipulated awards to cases involving “factual impossibility” or “clear error” on the basis that persons in those circumstances should be able to avail themselves of the settlement opportunity outside of arbitration, and then request that an arbitrator issue an award that incorporates the stipulated settlement and includes expungement relief for certain named parties. In excluding the other two grounds for expungement from its initial proposal, NASD noted that it believed that it was unlikely that claimant or claimant’s counsel would agree that the claim or information at issue was lacking in legal merit or was defamatory in nature. In response to comments, NASD proposes to modify the original proposal to allow expungement relief in stipulated awards (or on the basis of a settlement) based on all three grounds, with a uniform requirement that there be specific judicial or arbitral findings in all such cases. In connection with making the required arbitral findings in such cases, NASD will explore the use of telephonic versus in-person hearings, as well as the option of making a decision based on briefs and affidavits from the parties and relevant third parties.

In response to commenters’ concerns about the burdens and costs in naming NASD as an additional party in any judicial proceeding seeking expungement relief or confirming an arbitration award containing expungement relief and serving NASD with the appropriate court papers, NASD proposes to retain these requirements, but it further proposes to permit parties to ask NASD to waive the requirement that it be made a party upon a showing that the expungement relief being requested is within the established standards. This will save members and NASD time and expense by enabling NASD to review the findings of the arbitrators or court and determine to waive participation in the judicial proceeding if the findings meet at least one of the standards in the rule. If the expungement order fails to meet at least one of the standards in the rule, NASD will participate in the judicial proceeding and oppose the expungement. NASD also proposes to retain discretion not to oppose

expungement relief in exceptional cases where the basis for the expungement does not fall within one of the three standards. NASD would exercise such discretion only if it determines that the expungement is meritorious and would have no material adverse effect on investor protection, the integrity of the CRD system, or regulatory requirements.

After reviewing the comments, NASD also determined not to adopt a rule or Interpretive Material that would explicitly articulate NASD’s authority to pursue disciplinary actions for violations of just and equitable principles of trade against a member or associated person who seeks to have information about an arbitration claim expunged after there has been an award rendered against that member by the arbitrators or seeks to expunge any arbitration award that does not contain an expungement order and a finding of at least one of the criteria described in the Notice. NASD believes that it currently has authority under Rule 2110 to bring a disciplinary action against NASD members and their associated persons who contravene the standards set forth in NASD’s proposed rule and policies. NASD will revisit this issue in the future should it appear that such a rule is necessary.

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, as amended, or

B. Institute proceedings to determine whether the proposed rule change, as amended, 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, as amended, that are filed with the Commission, and all written

communications relating to the proposed rule change, as amended, 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–2002–168 and should be submitted by March 31, 2003.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47418; File No. SR–ODD–2003–01]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Proposed Supplement To Amend the Options Disclosure Document Regarding Options on Fund Shares, Settlement Prices for Index Options, and the Exemption of Standardized Options from the Provisions of the Securities Act of 1933; and Amendment to the Options Disclosure Document Front Cover Page To Identify the Markets in Which Options Are Traded

February 27, 2003.

On February 25, 2003, the Options Clearing Corporation (“OCC”) submitted to the Securities and Exchange Commission (“Commission”), pursuant to Rule 9b–1 under the Securities Exchange Act of 1934 (“Act”),¹ five definitive copies of a Supplement to its options disclosure document (“ODD”), which amends the ODD to describe, among other things, the risks and characteristics of trading in options, and, in particular, options on fund shares, settlement prices for index options, and the exemption of standardized options from the provisions of the Securities Act of 1933.² The ODD would also be amended to update its front inside cover page so

¹¹ 17 CFR 200.3–3(a)(12).

¹ 17 CFR 240.9b–1.

² See letter from Jean M. Cawley, First Vice President and Deputy General Counsel, OCC, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Commission, dated February 24, 2003.