

NASD believes that the proposed rule change is designed to accomplish these goals by permitting customers to trade SFCs in securities accounts.

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

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.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed rule Change Received from Members, Participants, or Others*

NASD received written comments from the CBOE on the original proposed rule change that was filed with the Commission on November 15, 2002 and amended on January 15, 2003. NASD has responded to the CBOE's comments and hereby amends its original rule proposal filed with the Commission on November 15, 2002.

### III. 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 No. SR-NASD-2003-45 and should be submitted by April 17, 2003.

### IV. Commission Findings and Order Granting Accelerated Approval of a Proposed Rule Change

The NASD has asked that the Commission approve the proposed rule change prior to the thirtieth day after publication of notice of the filing in the **Federal Register** to accommodate the continuance of trading of security futures in securities accounts pursuant to NASD rule 2520 on an uninterrupted

basis after the Pilot ends on March 20, 2003. 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. In particular, the Commission believes that the proposed rule change is consistent with the requirements of 15A(b)(6) of the Act,<sup>22</sup> which requires, among other things, that the rules of NASD be designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest.<sup>23</sup> In addition, the Commission believes that the proposed rule change is consistent with section 7(c)(2)(B) of the Act,<sup>24</sup> which provides, among other things, that the margin requirements for security futures must preserve the financial integrity of markets trading security futures, prevent systemic risk, be consistent with the margin requirements for comparable exchange-traded options, and provide that the margin levels for security futures may be no lower than the lowest level of margin, exclusive of premium, required for any comparable exchange-traded option.

The Commission believes that the rule change is generally consistent with the customer margin rules for security futures adopted by the Commission and the CFTC. In particular, the Commission notes that, consistent with rule 403 under the Act, the rule change provides for a minimum margin level of 20% of current market value for all positions in security futures carried in a securities account. The Commission believes that 20% is the minimum margin level necessary to satisfy the requirements of section 7(c)(2)(B) of the Act. Rule 403 under the Act<sup>25</sup> also provides that a national securities association may set margin levels lower than 20% of the current market value of the security future for an offsetting position involving security futures and related positions, provided that an association's margin levels for offsetting positions meet the criteria set forth in section 7(c)(2)(B) of the Act. The offsets proposed by NASD are consistent with the strategy-based offsets permitted for comparable offset positions involving exchange-traded options and therefore consistent with section 7(c)(2)(B) of the Act.

<sup>22</sup> *Id.*

<sup>23</sup> In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>24</sup> 15 U.S.C. 78g(c)(2)(B).

<sup>25</sup> 17 CFR 240.403(b)(2).

In addition, the Commission believes it is consistent with the Act for NASD to exclude from its margin requirements positions in SFCs carried in a futures account. The Commission believes that by choosing to exclude such positions from the scope of rule 2520, NASD's proposal will make compliance by members with the regulatory requirements of several SROs easier. Moreover, as proposed, NASD members will accord "good faith" margin treatment to specified offsetting positions involving security futures, carried in a securities account for an SFD, consistent with the customer margin rules for security futures adopted by the Commission and the CFTC.

After careful consideration of the commenter's concern about applying NASD's day trading margin requirements to SFCs, the Commission believes that it is reasonable for NASD to impose day trading margin requirements on its members with respect to SFCs carried in a securities account. As NASD noted, an SRO may adopt more stringent requirements than those promulgated by the Commission.

The Commission has also carefully considered the commenter's concern of using the term "bona fide" with respect to market maker or specialist transactions. The Commission notes that NASD has deleted the term "bona fide" in reference to market maker or specialist transactions, and instead is incorporating the definition of an SFD in rule 400(c)(2)(v) under the Act. The Commission believes that if it finds, in approving an SRO's rules for SFDs, that such rules are consistent with the definition of SFD in rule 400(c)(2)(v), those rules would also be consistent with NASD rule 2520 (f)(11)(D). Therefore, the Commission believes this amendment should address the commenter's concerns that NASD not impose a higher standard on transactions by market maker and specialist registered pursuant to rules of another SRO to qualify for favorable margin treatment.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposed rule change should enable NASD members to continue to trade SFCs in securities accounts on an uninterrupted basis. In addition, the Commission believes that granting accelerated approval to the proposed rule change should clarify NASD members' obligations under NASD rule 2520 with respect to their