

in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly market to assure the economically efficient execution of securities transactions. The Commission believes that permanent approval of the proposal would continue to provide OE Firms with greater flexibility to reflect buying and selling interest at various price levels by entering Non-Attributable Orders directly into SuperMontage, instead of relying on ECNs and NNMS Market Makers to post their trading interest.

The Commission notes that STA suggested that the pilot be extended for an additional 90 days to provide the Commission as well as other market participants greater opportunity to study the potential impact of the pilot. However, Nasdaq represented that there has been no apparent negative market impact on public investors during the pilot, and in fact, the pilot has proven to be a catalyst for additional liquidity in SuperMontage. Further, the Commission notes that the pilot has been in place since February 10, 2003, that 35 OE Firms are currently participating in the pilot, and that the Commission is not aware of any problems with the pilot. Accordingly, the Commission does not believe that an extension of the pilot program is warranted in lieu of granting permanent approval.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁷ that the proposed rule change and Amendment No. 1 (SR-NASD-2003-37) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47825; File No. SR-NFA-2003-03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Futures Association Regarding the Interpretive Notice to NFA Compliance Rules 2-7 and 2-24 and Registration Rule 401: Proficiency Requirements for Security Futures Products

May 9, 2003.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-7 under the Act,² notice is hereby given that on April 22, 2003, the National Futures Association ("NFA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes described in Items I, II, and III below, which Items have been prepared by the NFA. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons. NFA also has filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC").

On April 22, 2003, NFA requested that the CFTC make a determination that review of the proposed rule change is not necessary. The CFTC made such a determination on May 2, 2003.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

Currently, the Interpretive Notice to NFA Compliance Rules 2-7 and 2-24 and Registration Rule 401: Proficiency Requirements for Security Futures Products provides that new registrants can satisfy their proficiency requirements for security futures through training if they are registered no later than six months after the first retail, exchange-traded contract begins trading. The proposed rule change eliminates the six-month distinction and extends the training option to all new registrants who take the Series 3 examination and apply for registration before the revised examination becomes available. The proposed rule change also makes similar changes regarding the proficiency requirements for designated security futures principals.

Section 15A(k) of the Exchange Act³ makes NFA a national securities association for the limited purpose of

regulating the activities of Members who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Act.⁴ The interpretive notice regarding proficiency requirements for security futures products applies to these Members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

While the Interpretive Notice to NFA Compliance Rules 2-7 and 2-24 and Registration Rule 401: Proficiency Requirements for Security Futures Products applies to all current registrants, it presently states that new registrants can qualify by training only if they are registered within six months after the first retail, exchange-traded security futures contract begins trading. At the time the interpretive notice was adopted, NFA staff assumed that six months, or until May 8, 2003, would provide adequate time to update both the futures and the securities examinations. NASD, however, has recently informed NFA that its examinations will not be available until January 2004.

Although NFA is prepared to meet the May 8 deadline, a regulatory disparity may occur if NFA incorporates security futures questions into its proficiency examinations before the securities industry does. For that reason, NFA proposes to postpone the use of the revised exams until NASD's examinations are ready.

The current version of the interpretive notice incorporates the May 8 deadline through its references to a date six months after security futures begin trading. The revised interpretive notice extends the training option to all new registrants who take the Series 3 and apply for registration before the revised examination becomes available. The revised interpretive notice was similarly changed for designated security futures principals.

²⁷ 15 U.S.C. 78s(b)(2).

²⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(7).

² 17 CFR 240.19b-7.

³ 15 U.S.C. 78o-3(k).

⁴ 15 U.S.C. 78o(b)(11).