

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>17</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>18</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>19</sup>

### IV. 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 Section. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number SR-CBOE-2003-26 and should be submitted by August 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 03-19473 Filed 7-30-03; 8:45 am]

**BILLING CODE 8010-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48227; File No. SR-NASD-2003-74]

#### Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Regarding the Regulation of Activities of Members Experiencing Financial and/or Operational Difficulties

July 25, 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 April 16, 2003, 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. On June 17, 2003, NASD submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> On July 9, 2003, NASD submitted Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission is publishing

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated June 17, 2003 ("Amendment No. 1"). In Amendment No. 1, NASD proposed the following changes: (i) to revise NASD Rules 3130(e) and 3131(e) to state that the Department of Member Regulation may issue a notice to members that are not in compliance with applicable net capital requirements set forth in SEC Rule 15c3-1 or Section 402.2 of the rules of the Treasury Department, as applicable, directing such member to suspend all business operations, but that the obligation to suspend all business operations arises from the SEC Rule 15c3-1 or Section 402.2 of the rules of the Treasury Department, as applicable, and not from the notice issued by the Department of Member Regulation; (ii) to add new Rules 3130(f) and 3131(f) to provide that any notice directing a member to limit or suspend its business operations will be issued by the Department of Member Regulation pursuant to Rule 9412; and (iii) to make certain non-substantive technical changes to correct the rule language and the markings indicating changes thereto.

<sup>4</sup> See letter from Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated July 8, 2003 ("Amendment No. 2"). In Amendment No. 2, NASD proposed the following changes: (i) to revise NASD Rule 9412 to delete a reference to the Department of Member Regulation; (ii) to change a reference in NASD Rule 9415(d); and (iii) to delete subparagraph (g) of NASD Rule 9160. The Commission notes that Amendment No. 2 contains a typographical error with regards to the reference to NASD Rule 9515(k)(2) in the letter. The reference should be to NASD Rule 9413(k)(2), as set forth in the proposed rule text. The Commission notes further that in

this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD Rules 3130, 3131 and the Rule 9410 Series to expand NASD's authority to take expedited action against all member firms with capital deficiencies and to permit NASD to suspend a member that operates for any period of time with inadequate net capital. In addition, NASD proposes to delete subparagraph (g) of NASD Rule 9160 because the Department of Member Regulation staff does not participate as an adjudicator in a Rule 9410 decision.

The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].<sup>5</sup>

\* \* \* \* \*

#### 3130. Regulation of Activities of Members Experiencing Financial and/or Operational Difficulties

(a) Application—For the purposes of this Rule, the term "member" shall be limited to any NASD member [of the Association who] *that* is not designated to another self-regulatory organization by the Commission for financial responsibility pursuant to Section 17 of the Act and SEC Rule 17d-1 thereunder. Further, the term shall not be applicable to any member [who] *that* is [subject to paragraphs (a)(2)(iv), (a)(2)(v) or (a)(2)(vi) of SEC Rule 15c3-1, or is otherwise exempt from the provisions of said rule or is] subject to Rule 3131.

(b) *Each member subject to SEC Rule 15c3-1 shall comply with the net capital requirements prescribed therein and with the provisions of this Rule.*

[(b)](c) A member, when so directed by [the Association] NASD, shall not expand its business during any period in which:

(1) Any of the following conditions continue to exist, or have existed, for more than 15 consecutive business days:

Amendment No. 2, NASD incorrectly states that it is amending NASD Rule 9412. Amendment No. 2 makes no additional changes to NASD Rule 9412. Telephone conversation between Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, and Ann E. Leddy, Attorney, Division, Commission (July 21, 2003).

<sup>5</sup> The Commission has included proposed rule language set forth in the original filing that NASD inadvertently omitted from Amendment No. 2. Telephone conversation between Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, and Ann E. Leddy, Attorney, Division, Commission (July 17, 2003).

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(2).

<sup>19</sup> For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on July 23, 2003, the date the CBOE filed Amendment No. 1.

<sup>20</sup> 17 CFR 200.30-3(a)(12).