

proposed, changes to NASD Rule 2510(d)(1) require that time and price discretionary authority be limited to the day it is granted, absent written authorization to the contrary. Several commenters argued that the one-day time and price discretionary authority should be limited only to retail accounts and that NASD should craft an exemption for institutional accounts.<sup>25</sup> Commenters argue that large orders for institutional accounts are “worked” over one or more days on a Good-Till-Cancelled/Not-Held basis.

NASD believes that a general institutional exemption is inappropriate. However, in response to commenters’ concerns, NASD is amending NASD Rule 2510 to clarify that written authorization need not be obtained for the exercise of time and price discretion beyond the day a customer grants such discretion for orders effected with or for an institutional account, as that term is defined in NASD Rule 3110(c)(4), that are exercised pursuant to valid Good-Till-Cancelled instructions issued on a “not held” basis. NASD is also making a technical amendment to NASD Rule 3110(c)(4) to include a reference to the definition’s applicability to NASD Rule 2510.

Commenters requested that NASD clarify that the requirement to obtain written instructions for the exercise of time and price discretion beyond the business day it was granted allows customers to issue general “standing” instructions, rather than issuing written instructions on an order-by-order basis.<sup>26</sup>

The current text of NASD Rule 2510(d) clearly limits the exercise of time and price discretion to “the purchase or sale of a definite amount of a specified security. \* \* \* Any written authorization granting time and price discretion must comply with this established, trade-specific standard. Customers who wish to grant more extensive discretionary authority to their registered representatives may do so pursuant to a fully executed trading authorization.

iv. *Comments on NASD Rule 3110 (Books and Records)*. As originally proposed, changes to NASD Rule 3110 require that, before a customer order is executed, the account name or designation must be placed upon the memorandum for each transaction. In addition, only a designated person may approve any changes in account names or designations. The designated person also must document the essential facts relied upon in approving the changes and maintain the record in a central location. The designated person must pass a qualifying principal examination appropriate to the business of the firm before he or she can approve these changes.

One commenter stated that its clerical staff is responsible for making changes to account names or designations and that requiring a principal to authorize the changes and be informed of the surrounding facts would place undue burden and cost upon the firm.<sup>27</sup>

NASD understands the concerns that the proposed rule changes may place additional costs and burdens upon members. However, NASD believes that account names and designations are material information that must be protected from possible fraudulent activity. Requiring a principal to authorize the change and be aware of the surrounding facts for the change is a relatively low-cost method of protecting this information.

The same commenter stated that the requirement that a name or account designation be placed on “each transaction” is impractical for the administration of a variable life or variable annuity policy because dozens of transactions involving expense and insurance charges automatically occur each month for the multitude of funds associated with each policy.<sup>28</sup>

NASD proposed this rule change to promote consistency with the SEC’s books and records rules. Specifically, SEC Rule 17a-3(a)(6) requires that a memorandum of each brokerage order identify, among other things, the account for which the order was entered.<sup>29</sup> NASD expects that members, regardless of the type of securities business they engage in, will comply with this requirement in the same manner that they comply with the SEC’s books and records requirements.

At least one commenter requested clarification regarding whether a firm may avoid duplicate records by maintaining the “Account Designation

Change” documentation “in the location whether the determination and approval occurs,” rather than in the central location of the “Home Office.”<sup>30</sup>

NASD does not believe that the new account designation change recordkeeping requirement should be unduly complicated or burdensome for members. Accordingly, NASD has amended the proposed rule change to require members to preserve these records in a manner substantially similar to the record retention requirements of SEC Rule 17a-4.<sup>31</sup> Specifically, the proposed rule change requires members to preserve account designation change documentation for a period of not less than three years, with the documentation preserved for the first two years in an easily accessible place, as the term “easily accessible place” is used in SEC Rule 17a-4. This proposed change will not only allow members to use existing recordkeeping systems to meet this requirement, but it will enable members to make the account designation change documentation promptly available if requested by NASD examination staff. It also promotes consistency with NASD Rule 3110’s existing mandate that members’ recordkeeping format, medium, and retention periods comply with SEC Rule 17a-4 requirements.

v. *Comments on IM-3110 (Customer Account Information)*. As originally proposed, changes to IM-3110 would permit a member, upon a customer’s written instructions, to hold mail for a customer who will not be at his or her usual address for the period of his or her absence, but not to exceed (A) two months if the member is advised that the customer will be on vacation or traveling or (B) three months if the customer is going abroad.

At least one commenter stated that a member would have to impose additional recordkeeping and administrative controls to avoid lost or misplaced mail in situations where a customer that travels frequently looks to a member to provide custody of his or her mail.<sup>32</sup> If a member provides this service to its customers, NASD understands that the member may have to put in place additional procedures to comply with the limitations set forth in this rule. However, the rule will help to ensure that members that do hold mail for customers who are away from their usual addresses, do so only pursuant to the customers’ written instructions and

<sup>25</sup> A.G. Edwards & Sons, Inc., Brian C. Underwood, SVP (12/18/02); Charles Schwab & Co., Inc., Selwyn J. Noteliovitz, SVP (2/25/03); National Society of Compliance Professionals, Inc., Joan Ht & CEO (1/8/03); Securities Industry Association, Self-Regulation and Supervisory Practices Group, Christopher R. Franke, Chairman—Self-Regulation and Supervisory Practices Committee (12/18/02).

<sup>26</sup> National Society of Compliance Professionals, Inc., Joan Hinchman, Executive Director, President & CEO (1/8/03); Securities Industry Association, Self-Regulation and Supervisory Practices Group, Christopher R. Franke, Chairman—Self-Regulation and Supervisory Practices Committee (12/18/02).

<sup>27</sup> Midland National Life Insurance, P.M. Phalen, Assistant Vice President (12/17/02).

<sup>28</sup> *Id.*

<sup>29</sup> 17 CFR 240.17a-3(a)(6).

<sup>30</sup> See A.G. Edwards & Sons, Inc., Brian C. Underwood, SVP (12/18/02).

<sup>31</sup> 17 CFR 240.17a-4.

<sup>32</sup> John Hancock Financial Services, Inc., Robert H. Watts, SVP/CCO (12/17/02) & additional comments (1/16/03).