

the same terms as the NYSE's proposal.<sup>19</sup> Under a pilot program, NASD will have the opportunity to consider comments it received on the proposal, and facilitate the trading in securities futures in securities accounts for those NASD members, who are not also members of the NYSE.

#### IV. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>20</sup> In particular, the Commission believes that the proposed rule change is consistent with the requirements of section 15A(b)(6) of the Act,<sup>21</sup> which requires, among other things, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. In addition, the Commission believes that the proposed rule change is consistent with section 7(c)(2)(B) of the Act,<sup>22</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 provides 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.

Moreover, the Commission believes that the proposed 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, NASD's proposed rules provide 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>23</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.

The Commission also believes it is consistent with the Act for the 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, the NASD's proposal will make compliance by members with the regulatory requirements of several SROs easier.

The NASD has asked the Commission in Amendment No. 2 to approve the proposed rule change on a pilot basis to accommodate the expeditious trading of security futures for NASD customers of broker-dealers who are subject to NASD margin rules. NASD also has requested that the Commission approve the proposed rule change on a pilot basis under the same terms as the NYSE's pilot, pending the resolution of the issues raised by commenters. The Commission believes that there is good cause to approve the proposed rule change, as amended, on a pilot basis until March 6, 2003. The Commission notes that NASD's proposed rule change is substantially the same as NYSE's filing on margin requirements for security futures. Thus, the Commission believes that it is appropriate to approve NASD's proposed rule change on a pilot basis to enable customers of broker-dealers who are subject to NASD margin rules to trade security futures in securities accounts without unnecessary delay. The Commission expects that, similar to the NYSE, NASD will file a proposed rule change to adopt its margin requirements for security futures on a permanent basis, and consider the comments it received on this proposal.

#### V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether the proposed amendment 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 amendments that are filed with the Commission, and all written communications relating to the amendments 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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD.

All submissions should refer to File No. SR-NASD-2002-166 and should be submitted by February 24, 2003.

#### VI. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>24</sup> that the proposed rule change (SR-NASD-2002-166) is approved on a pilot basis until March 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.<sup>25</sup>

Jill M. Peterson,

Assistant Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47259; File No. SR-NASD-2001-47]

#### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto Relating to Audit Trail and Trading Halt Requirements for Alternative Trading Systems That Trade Security Futures

January 27, 2003.

#### I. Introduction

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 July 30, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change relating to audit trail and trading halt requirements for Alternative Trading Systems ("ATSs") that trade security futures.<sup>3</sup> By letter dated August 14, 2002, the Association filed

<sup>19</sup> See *supra* note .

<sup>20</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>21</sup> 15 U.S.C. 78o-3(b)(6).

<sup>22</sup> 15 U.S.C. 78g(c)(2)(B).

<sup>23</sup> 17 CFR 240.403(b)(2).

<sup>24</sup> 15 U.S.C. 78s(b)(2).

<sup>25</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Release No. 44623 (July 30, 2001), 66 FR 41076 (August 6, 2001).