

The Commission finds that the proposed rule change, as amended, is consistent with section 15A.¹⁴ Specifically, the Commission finds that the proposed rule change is consistent with section 15A(b)(6) of the Act which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.¹⁵

In addition, the Commission finds that the proposed rule change is consistent with section 15A(b)(11),¹⁶ which requires that the rules of a registered national securities association be designed to produce fair and informative quotations, prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

The Commission also believes that proposed rule change, as amended, is consistent with subparagraphs (B) and (C) of section 6(h)(5) of the Act,¹⁷ which sets forth the requirements that must be in place before ATSs provide a marketplace for trading security futures products. Island asserted that NASD rule 3115 requires that ATSs maintain more records than this statutory provision requires. In response, the NASD stated that the rule was not unnecessarily broad or burdensome. Pursuant to section 6(h)(5)(B) of the Act, the NASD, among other requirements, must have "rules to require audit trails necessary or appropriate to facilitate the coordinated surveillance required [under the Act]" before an ATS can trade security futures products.¹⁸ The Commission believes that the proposed rule change satisfies this requirement and agrees with the NASD that it is not unnecessarily broad or burdensome.

The Commission also believes that the amendment to NASD rule 3340 meets the goals of section 6(h)(5)(C) of the Act,¹⁹ which requires a national securities association to adopt rules to require its members "to coordinate trading halts with markets trading the

securities underlying the security future products and other markets trading related securities."²⁰ Island suggested that the NASD exempt ATSs that: (1) Do not accept new orders in such security during a trading halt; and (2) have procedures in place reasonably designed to prevent the execution of orders during a trading halt. The Commission, however, does not believe that it is necessary for NASD Rule 3340 to provide for the suggested exemption in order for the rule to be consistent with the Act. The Commission also notes that to satisfy other regulatory requirements, some ATSs have been able to block the public dissemination of orders for individual securities on their limit order books. Accordingly, ATSs appear to have the technological capability to restrict the display or publication of orders on their books. Thus, in the Commission's view, the NASD's amendments to its trading halt rule to cover security futures are not overly burdensome or inappropriate.

Finally, the Commission believes that the proposed rule is consistent with the goals expressed in section 11A(a)(1)(C) of the Act,²¹ which grants the Commission the authority to require rules designed to ensure appropriate protection of investors and the maintenance of fair and orderly markets to assure: (1) Economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors' orders in the best market; and (5) an opportunity for investors' orders to be executed without the participation of a dealer.

V. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

For the reasons discussed below, the Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**.

In Amendment No. 1, the NASD proposed NASD rule 3115(a)(15) to indicate that the ATS audit trail for security futures trading would include "an account identifier that relates the order back to the account owner(s)," and amended NASD rule 3340(b)(2) to increase the percentage of the market capitalization of underlying securities subject to a trading halt in a narrow-

based security index from 30% to 50%. The NASD amended the rule to include the account identifier provision because the account identifier has traditionally been a key component of an audit trail. The percentage increase from 30% to 50% in the market capitalization of underlying securities that triggers a trading halt in futures on a narrow-based security index was also proposed to more closely mirror rules approved by the Commission and the Commodity Futures Trading Commission ("CFTC") with respect to trading halts in security futures products.²² As Amendment No. 1, does not raise any novel regulatory issues, the Commission finds that granting accelerated approval to Amendment No. 1 is appropriate and consistent with section 19(b)(2) of the Act.²³

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendments No. 1 to NASD-2001-47, 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 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 Amendment No. 1 to File No. SR-NASD-2001-47 and should be submitted by February 24, 2003.

VII. Conclusion

For the foregoing reasons, the Commission finds that the proposal, as amended, is consistent with the requirements of the Act and rules and regulations hereunder.

¹⁴ 15 U.S.C. 78o-3.

¹⁵ 15 U.S.C. 78o-3(b)(6).

¹⁶ 15 U.S.C. 78o-3(b)(11).

¹⁷ 15 U.S.C. 78f(h)(5)(B) and (C).

¹⁸ See 15 U.S.C. 78f(h)(5)(B).

¹⁹ See 15 U.S.C. 78f(h)(5)(C).

²⁰ See 15 U.S.C. 78f(h)(5)(c).

²¹ 15 U.S.C. 78k-1(a)(1)(C).

²² See Securities and Exchange Act Release No. 34-45956 (May 17, 2002), 67 FR 36741 (May 24, 2002) (Cash Settlement and Regulatory Halt Requirements for Security Futures Products, Joint Final Rule of CFTC and the Commission).

²³ 15 U.S.C. 78s(b)(2).