

to customer accounts and not to other agreements between member firms and large institutional clients with whom they had negotiated contract terms.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed amendments to Rule 3110(f) will serve the public interest by providing customers with more complete information about the arbitration process.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 3 and 4, including whether the proposed rule change, as amended, 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 NASD. All submissions should refer to File No. SR-NASD-98-74 and should be submitted by October 3, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48438; File No. SR-NASD-2003-74]

### **Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of 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**

September 4, 2003.

On April 16, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to: (i) 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, and (ii) delete subparagraph (g) of NASD Rule 9160 because NASD's Department of Member Regulation staff does not participate as an adjudicator in an NASD Rule 9410 decision. 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 proposed rule change, as amended by Amendment No. 1 and Amendment No. 2, was published for comment in the **Federal Register** on July 31, 2003.<sup>5</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>6</sup> Specifically, the Commission believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,<sup>7</sup> which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the proposed amendments adequately address those circumstances where limiting an NASD member's business operations would be futile. Specifically, the Commission believes that because the proposal permits NASD to suspend any member that operates for any period of time with inadequate net capital, as required by Rule 15c3-1 under the Act, and § 402.2 of the rules of the Treasury Department, the proposed rule change should protect investors, market participants, and the general public from the risks posed by members operating securities businesses without appropriate levels of capital.

The Commission believes that the proposal to apply NASD Rules 3130 and 3131 to all members regardless of their minimum capital requirements should protect investors and the public interest. The Commission believes that any firm that operates with inadequate capital poses a risk to other firms and investors. Accordingly, the Commission believes

<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").

<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").

<sup>5</sup> See Securities Exchange Act Release No. 48227 (July 25, 2003), 68 FR 44980.

<sup>6</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

<sup>13</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.