

memoranda, and correspondence in conformance with applicable laws, rules, regulations and statements of policy promulgated thereunder, and with NASD Rules.

—Rule 8211, Rule 8212, and Rule 8213—Failure to submit trading data as requested.

—Article IV—Failure to timely submit amendments to Form BD.

—Article V—Failure to timely submit amendments to Form U-4.

—Rule 1120—Failure to comply with continuing education requirements (Firm Element).

—Rule 3010(b)(2)(vii)—Failure to timely file reports pursuant to the Taping Rule.

—Rule 3070—Failure to timely file reports.

—Rule 4619(d)—Failure to timely file notifications pursuant to SEC Regulation M.

—Rules 4632, 4642, 4652, 6240, 6420, 6620, 6650, and 6720—Transaction reporting in equity, convertible debt, and high yield securities.

—Rules 6130 and 6170—Transaction reporting to ACT.

—Rules 6954 and 6955—Failure to submit data in accordance with OATS.

—Rule 11870—Failure to abide by customer account transfer contracts.

—SEC Rule 11Ac1-4—Failure to properly display limit orders.

—SEC Rule 11Ac1-1(c)(5)—Failure to properly update published quotes in certain ECNs.

—SEC Exchange Act Rule 17a-5—Failure to timely file FOCUS reports and annual audit reports.

—SEC Exchange Act Rule 17a-10—Failure to timely file Schedule I.

—MSRB Rule A-14—Failure to pay annual fee.

—MSRB Rule G-12—Failure to abide by uniform practice rules.

—MSRB Rule G-14—Failure to submit reports.

—MSRB Rule G-36—Failure to timely submit reports.

—MSRB Rule G-37—Failure to timely submit reports for political contributions.

—MSRB Rule G-38—Failure to timely submit reports detailing consultant activities.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these

statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to clarify that a member's failure to timely file Schedule I, pursuant to Rule 17a-10 of the Act,⁴ is appropriate for disposition under the NASD's MRVP and that such member may be assessed a late fee under Schedule A. As described in more detail herein, the NASD believes that the current rule language in IM-9216 and Schedule A referring to Rule 17a-5 of the Act—FOCUS Report, does not clearly reflect that a failure to timely file Schedule I is included in the NASD's MRVP and late fee provision.

NASD's Minor Rule Violation Plan

In 1984, the Commission adopted amendments to Rule 19d-1(c) of the Act⁵ to allow self-regulatory organizations to adopt, with Commission approval, plans for the disposition of minor violations of rules.⁶ In 1993, pursuant to Rule 19d-1(c) of the Act,⁷ the NASD established a MRVP.⁸ See NASD Rule 9216(b). In 2001, the Commission approved amendments to the NASD's MRVP.⁹

NASD Rule 9216(b) authorizes the NASD to impose a fine of \$2,500 or less on any member or associated person of a member for a violation of any of the rules specified in NASD IM-9216. NASD staff reviews the number and seriousness of the violations, as well as the previous disciplinary history of the respondent to determine if a matter is appropriate for disposition under the Plan and to determine the amount of the fine. Once the NASD has brought a minor violation of a rule against an individual or member firm, the NASD may, at its discretion, issue progressively higher fines for all

subsequent minor violations of rules within the next 24-month period or initiate more formal disciplinary proceedings.

The purpose of the MRVP is to provide for a meaningful sanction for the minor or technical violation of a rule when the initiation of a disciplinary proceeding through the formal complaint process would be more costly and time-consuming than would be warranted. Inclusion of a rule in the NASD's MRVP does not mean it is an unimportant rule; rather, a minor or technical violation of the rule may be appropriate for disposition under the MRVP. The NASD retains the discretion to bring full disciplinary proceedings.

One violation eligible for disposition under the MRVP is listed in IM-9216 as "SEC Exchange Act Rule 17a-5—failure to timely file FOCUS reports and annual audit reports." Even though Schedule I is part of the FOCUS report, it is technically filed pursuant to Rule 17a-10 of the Act,¹⁰ not Rule 17a-5 of the Act.¹¹ As a result, some members may conclude that the failure to file Schedule I does not qualify for the NASD's MRVP. This is incorrect. The NASD believes that there is ample evidence to suggest that Schedule I, which is part of the FOCUS report, ought to be included in the MRVP.¹² In its 2001 rule filing expanding the MRVP (and late fee provision) to include late FOCUS reports, the NASD did not intend to exempt portions of the FOCUS report, such as Schedule I. To hold otherwise would allow the NASD to impose minor rule violations for only parts of the FOCUS report. Nevertheless, for purposes of clarity, the proposed rule change amends IM-9216 to make clear that a failure to timely file Schedule I is eligible for disposition under the MRVP.

Late Fees

In 2001, the Commission also approved amendments to Schedule A of the NASD By-laws that provide for the

¹⁰ 17 CFR 240.17a-10.

¹¹ 17 CFR 240.17a-5.

¹² The rule text of Rule 17a-10 under the Act specifically refers to Schedule I as being part of Form X-17A-5, the FOCUS Report. See, e.g., Rule 17a-10(a)(1) of the Act ("Every broker or dealer exempted from the filing requirements of paragraph (a) of Rule 17a-5 shall, not later than 17 business days after the close of each calendar year, file * * * Schedule I of Form X-17A-5 for such calendar year."); see also Rule 17a-10(a)(2) under the Act. In addition, the Commission characterizes Schedule I as being a supplement to the FOCUS report. See FOCUS Reporting System, Securities Exchange Act Release No. 13462 (Apr. 22, 1977), 12 S.E.C. Docket 156; Securities Exchange Act Release No. 13100 (Dec. 22, 1976), 42 FR 782 (January 4, 1977) (approving proposed Commission rule amendments).

⁴ 17 CFR 240.17a-10.

⁵ 17 CFR 240.19d-1(c).

⁶ See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23833 (June 8, 1994).

⁷ 17 CFR 240.19d-1(c).

⁸ See Securities Exchange Act Release No. 32076 (March 31, 1993), 58 FR 18291 (April 8, 1993)(SR-NASD-93-6); see also Notice to Members 93-42 (July 1993).

⁹ See Securities Exchange Act Release No. 44512 (July 3, 2001), 68 FR 36812 (July 13, 2001)(SR-NASD-00-39).