

its proposed rule change to include a more specific definition of materiality.

Of the six commenters who responded, five commenters thought that NASD should review other types of transactions not currently included in Rule 1014 or the rule proposal.¹⁷ One commenter believed that NASD should review all types of transactions commonly used to avoid liability and regulation,¹⁸ and a second commenter thought that the rule should be broad enough to allow NASD to review any transaction that could have an adverse effect on the payment of arbitration awards and other customer claims.¹⁹ One commenter did not think NASD should review other types of transactions.²⁰ NASD has determined not to expand its review to other types of transactions. Not only does the proposed rule change capture a much broader range of identifiable transactions that can cause potential customer harm, but there are also other means to capture violations outside of the membership application process. However, NASD may consider reviewing other types of transactions if it determines that any such transactions particularly raise investor protection issues.

A. Clarification of Members Required To Submit Applications

With respect to the proposal to require all non-NYSE selling members to submit an application to NASD regardless of whether the buyer is an NYSE member, a slight majority of the commenters supported the proposal. Of the six commenters who responded, four commenters supported the proposal.²¹ One commenter believed this type of review would help regulators better coordinate among themselves.²² Two commenters opposed this proposal.²³ One commenter believed that an NASD review should

depend upon the types of assets and scope of the transactions.²⁴

B. Burden of Proof

All the commenters supported the proposal that applicants bear the burden of proof to demonstrate that they should be approved for membership despite the presence of a regulatory history. Six of the commenters also responded to whether it is appropriate to impose the burden of proof for pending matters such as pending investigations and arbitrations.²⁵ Of the six who responded, five thought it was appropriate to extend the language to pending investigations and arbitrations.²⁶ One commenter thought it was inappropriate.²⁷

Expansion of Scope of Rule 1014 To Include Non-Natural Persons

All six commenters who responded to the proposal to expand Rule 1014 to include non-natural persons supported the proposal.²⁸ One commenter noted that the proposed rule change would clarify any confusion.²⁹

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 the foregoing, including whether the proposal 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 File No. SR-NASD-2003-07 and should be submitted by November 13, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48656; File No. SR-NASD-2003-139]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Technical Amendments to Rule 2710

October 17, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 12, 2003, the National Association of Securities Dealers, Inc. ("NASD") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by NASD. On October 16, 2003, NASD

¹⁷ See comment letters from Anonymous, dated September 18, 2002; Anderson Corporate Finance, LLC, dated August 28, 2002; Canaccord Capital Corporation, USA, dated September 20, 2002; Kirk Securities Corporation, dated September 17, 2002; and Rhodes Securities, Inc., dated September 16, 2002.

¹⁸ See comment letter from Kirk Securities Corporation, dated September 17, 2002.

¹⁹ See comment letter from Anderson Corporate Finance, LLC, dated August 28, 2002.

²⁰ See comment letter from Anonymous, dated September 13, 2002.

²¹ See comment letters from Anonymous, dated September 18, 2002; Anderson Corporate Finance, LLC, dated August 28, 2002; Kirk Securities Corporation, dated September 17, 2002; and Rhodes Securities, Inc., dated September 16, 2002.

²² See comment letter from Kirk Securities Corporation, dated September 17, 2002.

²³ See comment letters from Anonymous, dated September 13, 2002; and Canaccord Capital Corporation, USA, dated September 20, 2002.

²⁴ See comment letter from Canaccord Capital Corporation, USA, dated September 20, 2002.

²⁵ See comment letters from Anonymous, dated September 13, 2002; Anonymous, dated September 18, 2002; Anderson Corporate Finance, LLC, dated August 28, 2002; Canaccord Capital Corporation, USA, dated September 20, 2002; Kirk Securities Corporation, dated September 17, 2002; and Rhodes Securities, Inc., dated September 16, 2002.

²⁶ See comment letters from Anonymous, dated September 13, 2002; Anonymous, dated September 18, 2002; Anderson Corporate Finance, LLC, dated August 28, 2002; Canaccord Capital Corporation, USA, dated September 20, 2002; and Kirk Securities Corporation, dated September 17, 2002.

²⁷ See comment letter from Anderson Corporate Finance, LLC, dated August 28, 2002.

²⁸ See comment letters from Anonymous, dated September 13, 2002; and Canaccord Capital Corporation, USA, dated September 20, 2002.

²⁹ See comment letter from Anderson Corporate Finance, LLC, dated August 28, 2002.

³⁰ 17 CFR 200.30-3(a)(12)

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.