

("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 15, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with 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 the NASD. On September 2, 2003, the NASD filed an amendment to the proposed rule change.³ On November 18, 2003, the NASD again amended the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to create a new rule series, the proposed NASD Rule 9550 Series, to consolidate, clarify and streamline those existing procedural rules that have an expedited proceeding component. The text of the proposed rule change is available at the NASD and at the Commission.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASD proposes to modify certain NASD rules that have an expedited proceeding component to make them more understandable and uniform, and

to make the overall process for actions covered by such rules more efficient. Existing NASD rules recognize that expedited treatment is needed for certain types of actions. These actions fall into two general categories: (i) Those that involve misconduct capable of causing further harm to the investing public, other members or the integrity of the markets; and (ii) those that can be appropriately expedited for administrative ease. Unlike disciplinary actions that may concern complex sales-practice violations, the expedited actions that are affected by this proposal generally involve straightforward issues unrelated to complicated securities transactions (e.g., whether the respondent paid an arbitration award or NASD fee, provided information requested by NASD staff, or complied with the net capital requirements).⁵

However, the present NASD rules that have provisions for fast-track procedures vary considerably in some respects and overlap in others, at times without any clear rationale. The proposed rule change, discussed in detail below, streamlines and clarifies the existing expedited rules and makes them more uniform. At the same time, the modifications, which do not abrogate any substantive rights held by

⁵ In most instances, the issues raised by these types of proceedings are uncomplicated and the defenses are limited. For example, in a case involving a respondent's failure to pay an arbitration award, the issue presented is whether the member or person has paid the award. A respondent cannot collaterally attack the actual arbitration award. See *John G. Pearce*, 52 S.E.C. 796, 798, 1996 SEC LEXIS 1329, at *5 (1996) ("To permit a party dissatisfied with an arbitral award to attack it collaterally for legal flaws in a subsequent disciplinary proceeding would subvert the salutary objective that the NASD's [arbitration] resolution seeks to promote."); see also *James Anthony Morrill*, 51 S.E.C. 1162, 1164 n.6, 1994 SEC LEXIS 1766, at *6 (1994) (same). Similarly, in an action for failure to provide information, the issue presented is whether the respondent provided information requested by the NASD. It is well settled that respondents must fully and promptly cooperate with the NASD, see *Mark Allen Elliott*, 51 S.E.C. 1148, 1150, 1994 SEC LEXIS 1765, at *5-6 (1994), and respondents cannot second guess NASD information requests or impose conditions on responding. See *Joseph Patrick Hannan*, 53 S.E.C. 854, 859, 1998 SEC LEXIS 1955, at *11 (1998) ("[A]n NASD member may not 'second guess' or 'impose conditions on' the NASD's request for information."); *Michael David Borth*, 51 S.E.C. 178, 181, 1992 SEC LEXIS 3248, at *7 (1992) ("The Rules do not permit second guessing the NASD's requests" or permit a respondent "to shift his responsibility to others * * *"). The issues also are very narrow in a net capital case. Indeed, "[t]he gravamen of the charge is the conduct of business by the firm while its net capital is deficient. The cause of the deficiency does not bear on this issue." *Charters & Co. of Miami*, 43 S.E.C. 175, 177, 1966 SEC LEXIS 189, at *6 (1966). See also *Litwin Securities, Inc.*, 52 S.E.C. 1339, 1344-45, 1997 SEC LEXIS 1146, at *16 (1997) (holding that intent is irrelevant to whether a respondent violated the net capital requirements).

members or associated persons, continue to ensure that expedited actions are fair to all parties. The current rules that have been renumbered and otherwise affected by the proposed rule change are as follows:

- NASD Rule 8220 Series (Suspension for Obstructing Investigations);⁶
- NASD Rule 9410 Series (Procedures for Regulating Activities of a Member Experiencing Financial or Operational Difficulties);⁷
- NASD Rule 9510 Series (Summary and Non-Summary Proceedings);⁸
- NASD Rule 9530 Series (Suspension or Cancellation for Failure to Pay Dues, Fees and Other Charges);⁹ and

⁶ The current NASD Rule 8220 Series (Suspension for Obstructing Investigations) is now located at proposed NASD Rule 9552 (Failure to Provide Information or Keep Information Current).

⁷ The current NASD Rule 9410 Series (Procedures for Regulating Activities of a Member Experiencing Financial or Operational Difficulties) is now located at proposed NASD Rule 9557 (Procedures for Regulating Activities Under NASD Rules 3130 and 3131 Regarding a Member Experiencing Financial or Operational Difficulties). As noted above, on September 4, 2003, the Commission approved certain NASD proposed changes to NASD Rules 3130 and 3131 and the NASD Rule 9410 Series. See Securities Exchange Act Release No. 48438 (September 4, 2003), 68 FR 53766 (September 12, 2003) (SR-NASD-2003-74) (Commission Approval Order of NASD Proposed Rule Change Regarding the Regulation of Activities of Members Experiencing Financial and/or Operational Difficulties).

⁸ The current NASD Rule 9510 Series (Summary and Non-Summary Proceedings) has been separated into a number of individual proposed rules. Summary proceedings under NASD Rule 9511(a)(1) for actions authorized under section 15A(h)(3) of the Act are now located at proposed NASD Rule 9558 (Summary Proceedings for Actions Authorized by section 15A(h)(3) of the Act). Non-summary proceedings under NASD Rule 9511(a)(2)(A) for failure to comply with an arbitration award or related settlement agreement are now located at proposed NASD Rule 9554 (Failure to Comply with an Arbitration Award or Related Settlement). Non-summary proceedings under NASD Rule 9511(a)(2)(B) for failure to meet the qualification requirements or other prerequisites for access to the NASD or member services is now located at proposed NASD Rule 9555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services). Non-summary proceedings under NASD Rule 9511(a)(2)(C) for failure to adhere to certain public communication standards are now located at proposed NASD Rule 9551 (Failure to Comply with the Public Communication Standards). Finally, non-summary proceedings under NASD Rule 9511(a)(2)(D) for failure to comply with a temporary or permanent cease and desist order are now located at proposed NASD Rule 9556 (Failure to Comply with a Temporary or Permanent Cease and Desist Order). It should be noted that proposed NASD Rule 9556, along with the NASD Rule 9800 Series and related amendments adopted by SR-NASD-98-80, will expire on June 23, 2005, unless extended or permanently adopted by the NASD pursuant to Commission approval at or before such date.

⁹ The current NASD Rule 9530 Series (Suspension or Cancellation for Failure to Pay Dues, Fees and Other Charges) is now located at proposed NASD Rule 9553 (Suspension or Cancellation for Failure to Pay Dues, Fees and Other Charges).

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, to Kathy England, Assistant Director, Division of Market Regulation ("Division"), Commission dated August 29, 2003 ("Amendment No. 1"). Amendment No. 1 amended and superseded the proposed rule change in its entirety.

⁴ See letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, to Kathy England, Assistant Director, Division, Commission dated November 17, 2003 ("Amendment No. 2"). Amendment No. 2 amended and superseded the proposed rule change in its entirety.