

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether the 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. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-NASD-2002-168. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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-2002-168 and should be submitted by January 14, 2004.

#### V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>36</sup> that the proposed rule change (SR-NASD-2002-168), as modified by Amendment No. 1, be, and it hereby is, approved, and that Amendment No. 2 be, and hereby is, approved on an accelerated basis. As discussed above, the NASD will announce the effective date of this proposed rule change through a NtM to be circulated as soon as possible after the publication of this approval order in the **Federal Register**.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>37</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48930; File No. SR-NASD-2003-177]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Technical Amendments to Interpretive Material 3130

December 16, 2003.

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> notice is hereby given that on December 2, 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 NASD. NASD has designated the proposed rule change as "non-controversial" under section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NASD is proposing to amend NASD IM-3130. The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

\* \* \* \* \*

#### IM-3130. Restrictions on a Member's Activity

(a) This explanation outlines and discusses some of the financial and operational deficiencies which could initiate action under Rule 3130. Paragraphs [(b)](c)(2) and [(c)](d)(2) of Rules 3130 and 3131 recognize that there are various unstated financial and operational reasons for which [the Association] NASD may impose restrictions on a member so as to prohibit its expansion or to require a reduction in overall level of business. These provisions are deemed necessary in order to provide for the variety of situations and practices which do arise and which, if allowed to persist, could

result in increased exposure to customers and to broker/dealers.

(b) In the opinion of the Board of Governors, it would be impractical and unwise to attempt to identify and list all of the situations and practices [which] that might lead to the imposition of restrictions or the types of remedial actions [the Association] NASD may direct be taken because they are numerous and cannot be totally identified or specified with any degree of precision. The Board believes, however, that it would be helpful to members' understanding to list some of the other bases upon which [the Association] NASD may conclude that a member is in or approaching financial difficulty.

(c) For purposes of paragraphs [(b)](c)(2) and [(c)](d)(2) of Rule 3130, a member may be considered to be in or approaching financial or operational difficulty in conducting its operations and therefore subject to restrictions if it is determined by [the Association] NASD that any of the parameters specified therein are exceeded or one or more of the following conditions exist:

(1) through (8) No change

(d) For purposes of paragraphs [(b)](c)(2) and [(c)](d)(2) of Rule 3131, a member may be considered to be in or approaching financial or operational difficulty in conducting its operations and therefore subject to restrictions if it is determined by [the Association] NASD that any of the parameters specified therein are exceeded or one or more of the following conditions exist:

(1) No change

(2) The member has experienced a substantial change in the manner in which it processes its business which, in [the] NASD's view, [of the Association,] increases the potential risk of loss to customers and members.

(3) through (8) No change

(e) If [the Association] NASD determines that any of the conditions specified in paragraphs (c) or (d) of this explanation exist, it may require that the member take appropriate action by effecting one or more of the following actions until such time as [the Association] NASD determines they are no longer required:

(1) through (12) No change

(13) Be subject to such other restrictions or take such other action as [the Association] NASD deems appropriate under the circumstances in the public interest and for the protection of members.

\* \* \* \* \*

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>36</sup> 15 U.S.C. 78s(b)(2).

<sup>37</sup> 17 CFR 200.30-2(a)(12).