

## V. Solicitation of Comments on Amendment No. 3

Interested persons are invited to submit written data, views, and arguments on Amendment No. 3, 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 also may be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comments should refer to File No. SR-NASD-2003-44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review 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 Nasdaq. All submissions should refer to File No. SR-NASD-2003-44 and should be submitted by January 21, 2004.

## VI. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>38</sup> that the proposed rule change (SR-NASD-2003-44) and Amendment Nos. 1 and 2 are approved, and that Amendment No. 3 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>39</sup>

**Jill M. Peterson,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48969; File No. SR-NASD-2003-07]

### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend Rules 1011, 1014 and 1017

December 22, 2003.

On January 17, 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 amend NASD Rules 1011, 1014 and 1017. On September 17, 2003, NASD filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On October 16, 2003, NASD filed Amendment No. 2 to the proposed rule change.<sup>4</sup> Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on October 23, 2003.<sup>5</sup> No comments were received on the proposed rule change. This order approves the proposed rule change.

In brief, NASD would amend certain of its rules that govern applications for NASD membership and applications for approval of changes in business structure by NASD members. Currently, NASD Rule 1014 delineates certain factors, such as pending or past regulatory actions, that NASD may consider in assessing an applicant's ability to comply with applicable law and regulations, NASD rules, and just and equitable principles of trade. Furthermore, Rule 1017 requires existing NASD members to apply to NASD for approval of continued membership in the event of certain changes to their ownership, control or business operations. In reviewing such applications, NASD staff also considers the factors listed in Rule 1014. NASD asserts that it has proposed these changes in order to strengthen its ability to protect investors with pending claims, awards or judgments against NASD members, and to otherwise detect and prevent misconduct.

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

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

<sup>3</sup> See letter from Kosha K. Dalal, Assistant General Counsel, NASD, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated September 16, 2003.

<sup>4</sup> See letter from Kosha K. Dalal, Assistant General Counsel, NASD, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated October 15, 2003.

<sup>5</sup> See Securities Exchange Act Release No. 48651 (October 17, 2003), 68 FR 60750 ("Notice").

Accordingly, NASD would modify Rule 1017(a)(3) regarding when a member must request approval of a disposition of assets. The rule currently requires an NASD member to file an application for an "acquisition of substantially all of the member's assets, unless the acquiring member is a member of the New York Stock Exchange, Inc. [NYSE]." NASD would amend Rule 1017(a)(3) in three ways. First, it would add that transfers of a firm's assets, and not only acquisitions, would require approval. Second, NASD would require approval of a transfer unless *both* parties to the transaction, and not just the acquiring party, are members of the NYSE. Third, NASD would change the amount of a transfer that requires a request for approval from "substantially all" of the member's assets to "25% or more in the aggregate of the member's assets or any asset, business or line of operation that generates revenues comprising 25% or more in the aggregate of the member's earnings measured on a rolling 36-month basis."

NASD would also modify the factors listed in Rule 1014 that it considers in reviewing applications for membership and continued membership by adding pending arbitrations or civil actions against the applicant, as well as unpaid arbitration awards, or other adjudicated customer awards against the applicant and other persons who may have significant control or influence over the applicant. Such other persons would include the applicant's controlling persons, principals, registered representatives, other Associated Persons, any lender of 5% or more of the applicant's net capital, and any other member with respect to which these persons were a controlling person or a 5% lender of the applicant's net capital.

In addition, NASD's proposal would provide for a rebuttable presumption that an application for membership or continued membership should be denied when an analysis of the applicant's history reveals any one of the negative events enumerated in Rule 1014(a)(3)(A), (C), (D) and (E).<sup>6</sup> An applicant could overcome this presumption by demonstrating that it could nevertheless meet NASD's membership standards.

Finally, for purposes of its rules governing the above-described application processes, NASD would amend its definition of "Associated Person." The term, as defined in Rule 1011(b), would be amended to bring

<sup>6</sup> See Notice, 68 FR at 60751.

<sup>38</sup> *Id.*

<sup>39</sup> 17 CFR 200.30-3(a)(12).