

non-natural controlling persons within the scope of its coverage.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁷ Specifically, the Commission finds that the proposal is consistent with section 15A(b)(6) of the Act,⁸ which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the amendments should improve NASD's ability to ensure that its membership is not likely to engage in conduct that may be harmful to public investors.

The Commission believes that NASD's proposed changes to Rule 1017 are proper. First, the adoption of a defined quantitative measure of the amount of assets transferred that will require an application for approval should provide a greater degree of clarity to NASD members such that they may more readily anticipate when it will be necessary to file an application. The Commission also notes that the changes to Rule 1017 should result in its application to a broader range of transactions, in that applications for approval will now be required for any form of asset transfer, and not only acquisitions, and will be required except where both parties are members of the NYSE. This should enhance the NASD's ability to ensure that such transactions do not result in a member or its owners insulating itself or themselves from the responsibility to pay existing or potential customer claims.

The Commission believes that NASD's codification of a rebuttable presumption to deny an application for membership or continued membership where the applicant's history reflects any of the negative events specified in Rule 1014(a)(3)(A) and (C) through (E) is also proper. The Commission notes that this presumption should provide additional guidance to applicants as to how such events will be assessed in considering an applicant's ability to comply with NASD's membership standards. Moreover, the change should serve to provide notice to potential applicants of the consequences of

misconduct, and thereby discourage it. The Commission also notes that the presumption may be overcome if the applicant can demonstrate that it is otherwise capable of meeting NASD's membership standards. The Commission believes that, because NASD is a member organization charged with the protection of investors and the public interest, it is fair to require applicants to show why membership should be granted, notwithstanding any prior history of misconduct.

As a further measure to encourage compliance with arbitration or other awards, and to deny entry to those who disregard them, NASD has proposed to amend Rule 1014(a)(3) to add pending arbitrations or civil actions to the list of factors considered in deciding whether to grant membership or continued membership. Further, NASD would add the existence of unpaid arbitration awards or settlements, or other adjudicated customer awards, to the factors listed in Rule 1014(a)(3) that would trigger the presumption against granting approval of membership or continued membership. NASD would consider this factor not only in reviewing the member's application, but also in reviewing its control persons and other persons who, by virtue of other arrangements or capital structure, exercise control over the applicant. The Commission believes that these changes are appropriate because such matters may demonstrate an applicant's ability or willingness to comply with the Act, the regulations of the Commission and the rules of NASD. Moreover, the new provisions should provide incentive to NASD members, potential NASD members, and persons that control NASD members to comply with arbitration or other awards.

Finally, the Commission believes that NASD's expansion of the definition of "Associated Person," for purposes of its membership rules, to include non-natural persons is proper. The Commission believes the inclusion of such persons should permit NASD to examine a broader range of entities that potentially control an applicant, and thereby ensure that its ability to assess the applicant and the applicant's business history are not unnecessarily restricted.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change (File No. SR-NASD-2003-07) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03-32179 Filed 12-30-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48986; File No. SR-NASD-2003-183]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Proposed Amendments to Rule 1120 Regarding Regulatory Element Contact Person

December 23, 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 December 9, 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. 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

The NASD is proposing to amend Rule 1120 to require that each member designate and identify to NASD the individual(s) who will receive Web Central Registration Depository ("CRD") continuing education ("CE") Regulatory Element e-mails. The proposed rule change further would require that each member quarterly review and update the CE contact person(s) information. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

1120. Continuing Education Requirements

This Rule prescribes requirements regarding the continuing education of certain registered persons subsequent to their initial qualification and registration with NASD [the Association]. The requirements shall

⁷ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78o-3(b)(6).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.