

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

FICC does not believe that the proposed rule change would have any impact or impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments relating to the proposed rule change have not been solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five 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 ninety 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 the 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 proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>), or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FICC-2005-09 on the subject line.

*Paper comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-0609.

All submissions should refer to File Number SR-FICC-2005-09. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at <http://www.ficc.com>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FICC-2005-09 and should be submitted on or before July 5, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5-3049 Filed 6-10-05; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-51786; File No. SR-NASD-2005-064]

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc. Notice of Filing of Proposed Rule Change Relating to the Publication of Any Decision Issued by the National Adjudicatory Council Pursuant to Rule 1015**

June 6, 2005.

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 May 12, 2005, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>4</sup> 17 CFR 200.30-3(a)(12).

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

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

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

NASD is proposing to amend NASD Interpretative Material 8310-2 ("IM-8310-2") to give NASD authority to release to the public, in unredacted form, information with respect to any decision issued by the National Adjudicatory Council ("NAC") pursuant to NASD Rule 1015. The text of the proposed rule change is available on NASD's Web site (<http://www.nasd.com>), at NASD's Office of the Secretary, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, 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. 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 Statutory Basis for, the Proposed Rule Change***1. Purpose**

The proposed rule change will amend IM-8310-2 to give NASD authority to release to the public, in unredacted form, information with respect to any decision issued by the NAC pursuant to Rule 1015. Rule 1015 is part of the Rule 1010 Series governing membership proceedings. These proceedings involve both new member applications and applications for approval of a change in ownership, control, or business operations.

*Background.* The NAC reviews two types of membership decisions that are adverse to the applicants. Under Rule 1014, NASD's Department of Member Regulation ("Department") determines whether an applicant meets all of the requisite standards for admission to NASD and serves the applicant with a written decision. Department decisions under Rule 1014 explain the reason for any restriction or, in some cases, denial. Under Rule 1017, the Department considers applications for approval of change in ownership, control, or business operations and renders a decision. Department decisions under Rule 1017 explain the basis for denying

a requested application in whole or in part.

Under Rule 1015, an aggrieved applicant may file a written request for NAC review of the Department's decision issued under Rules 1014 or 1017. Unlike disciplinary appeals conducted pursuant to the Rule 9300 Series, membership appeal hearings before the NAC are trial-level proceedings that usually involve the submission of new exhibits and testimony and are not limited to 30-minute appellate argument. The NAC may affirm, modify, or reverse the Department's decision or remand the membership proceeding with instructions. The NAC's decision will include a description of the Department's decision, including its rationale; a description of the principal issues raised; a summary of the evidence; a statement as to whether the Department's decision is affirmed, modified, or reversed; and a rationale for the decision that references the applicable standards. The NAC's decisions under Rule 1015 are subject to discretionary review by the NASD Board, which may affirm, modify, reverse, or remand the NAC's proposed decision. IM-8310-2 does not currently provide for the release of NAC membership application decisions.<sup>3</sup>

**Proposed Rule Change.** The proposed rule change would amend IM-8310-2 to give NASD authority to release to the public, information with respect to any decision issued by the NAC pursuant to Rule 1015, including decisions pertaining to new membership applications (Rule 1014) or continuing membership applications (Rule 1017). NASD proposes to release these decisions in unredacted form, except that the decisions would not routinely identify those persons who are not themselves under consideration or review as part of the membership application process. For example, the decisions would not routinely name shareholders of a closely held broker-dealer that is being sold when the decision evaluates the qualifications of

the proposed buyers. NASD notes that, if a member appeals the NAC's adverse decision to the SEC, the SEC will make its decision in the matter available to the public, including on the SEC's Web site.

NASD believes that making these decisions available to the public would benefit both potential new members and members that are considering a change in ownership, control, or business operations. Access to these decisions would assist applicants in understanding the standards that must be met under Rule 1014 or 1017, as appropriate, and the manner in which such standards are applied, especially with respect to applicants that are denied membership. Applicants also would be better informed about the membership process and standards and may be deterred from pursuing meritless appeals. NASD believes that public investors and persons who are potentially seeking NASD membership should have the opportunity to review the rationale behind the NAC's decisionmaking, including where the NAC denies membership to an applicant. In addition, publishing the NAC's decisions would benefit the NAC members who serve on the subcommittees that conduct the hearing in connection with applications for membership and change in ownership, control, or business operations because their decisions could cite to and build upon earlier NAC precedents.

NASD also believes that public investors will benefit from the availability of information about any limitations placed on members, where such limitations result from proceedings before the NAC. NASD believes that public investors also will benefit from the availability of NAC decisions that describe the factors that have been instrumental in the granting of membership or the expansion of business activities available to the public.

NASD will announce the effective date of the proposed rule change in a *Notice to Members* to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the *Notice to Members* announcing Commission approval. NASD will publish only those NAC decisions issued pursuant to Rule 1015 in which the appeal has been filed on or after the effective date of this proposed rule change.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions

of with Section 15A(b)(6) of the Act,<sup>4</sup> which requires, among other things, that NASD rules must 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. NASD believes that amending IM-8310-2 to release to the public information with respect to any decision issued by the NAC under Rule 1015, in unredacted form, is in the interest of both member firms and the general public to be able to read these decisions to become better informed about NASD's membership process and standards and the manner in which such standards are applied.

### B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

## 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 NASD 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 proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File

<sup>3</sup> NASD currently makes the following decisions issued by the NAC available to the public under IM-8310-2 and publishes them on NASD's Web site:

- In unredacted form, any disciplinary decision imposing a suspension, cancellation or expulsion of a member; or suspension or revocation of the registration of an associated person; or suspension or barring of a member or person associated with a member; or imposition of monetary sanctions of \$10,000 or more on a member or associated person;
- In redacted form, any disciplinary decision that does not meet the above requirements;
- In redacted form, decisions issued in eligibility proceedings governing the association of a statutorily disqualified person with a member.

<sup>4</sup> 15 U.S.C. 78o-3(b)(6).

Number SR–NASD–2005–064 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2005–064. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of NASD.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR–NASD–2005–064 and should be submitted on or before July 5, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–3055 Filed 6–10–05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51790; File No. SR–NYSE–2004–42]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 To Eliminate the Requirement That a Floor Official Approve Certain Transactions on the Exchange's Automated Bond System

June 6, 2005.

#### I. Introduction

On August 10, 2004, the New York Stock Exchange, Inc. (“NYSE” or “Exchange”) 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 eliminate the requirement that an Exchange Floor Official approve transactions in certain bonds on the NYSE's Automated Bond System (“ABS”) that are made two points or more away from the last sale, or more than 30 days after the last sale. The NYSE filed Amendment No. 1 to the proposed rule change on March 30, 2005.<sup>3</sup> The proposed rule change, as amended, was published for comment in the *Federal Register* on May 2, 2005.<sup>4</sup> The Commission received one comment from the public supporting the proposed rule change.<sup>5</sup> This Order approves the proposed rule, as amended.

#### II. Description

The Exchange proposed to eliminate the requirement in NYSE Rule 86(g) that a Floor Official approve any transaction in ABS in non-convertible bonds that would occur at a price two or more

points away from the most recent transaction in that bond or more than 30 days after the most recent transaction. The proposal also would eliminate the ability of a Floor Official to “bid up” or “offer down”<sup>6</sup> an order submitted to ABS two or more points away from the last sale in a particular bond or more than 30 days following a sale of that bond before approving a transaction for such order.

The Exchange also proposed to codify in NYSE Rule 86(g) two features the NYSE represents have been programmed into ABS since its inception: (1) The acceptance of priced orders only; and (2) price confirmation, by the entering firm, of orders entered at a price two or more points away from the last sale price.

#### III. Comment Received

As stated above, the commenter supported the NYSE's proposal.<sup>7</sup> In sum, the commenter stated that he believed that NYSE Rule 86(g) has frustrated trading in ABS, and that he believed that the elimination of Floor Official approval would facilitate an increase in the volume and consistency in the execution of non-convertible bonds on ABS.

#### IV. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> In particular, the Commission finds that the proposal, as amended, is consistent with the provisions of Section 6(b)(5) of the Act,<sup>9</sup> which requires, among other

<sup>6</sup> If, for example, an order is entered into ABS to buy 10 XYZ bonds at 93 when the last sale for XYZ occurred at 90, the Floor Official could determine that XYZ bond should be “bid up” at a decided price increment away from the limit order for a decided period of time, typically one “point” for one minute. The NYSE bond supervisor would then enter the bidding-up starting price, price increment, time increment, and final price into ABS, upon which a message appears on all ABS screens alerting subscribing firms that bidding up in XYZ has commenced. An ABS user could execute against that “bid” by entering an order to sell at 91 into the system. If, after one minute, the “bid” at 91 generated no interest among ABS users, the order would be bid at 92 for one minute. If that “bid” generated no interest, then the order would, after one minute, be bid at 93 or be matched (traded) at 93, depending on whether there was a contra-side order to sell at 93 in the ABS at that point in time. Telephone conversation between Fred Siesel, Consultant, NYSE, and Tim Fox, Attorney, Commission on April 18, 2005.

<sup>7</sup> See Investec E-mail *supra* note 5.

<sup>8</sup> 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).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> In Amendment No. 1, which replaced and superseded the original filing in its entirety, the NYSE supplemented its rationale for the proposal by, among other things, describing the process that a Floor Official follows when considering whether to approve a transaction that would occur at a price that is at least two points away or more than 30 days from the last transaction; recounting some of the history of bond trading on the NYSE; explaining that the Exchange has not found it necessary to re-instate the two-point / 30-day provision for convertible bonds since it eliminated its applicability to convertible bonds in 1998; and noting that Exchange Rule 86(g) requires all orders to be entered into ABS at a limit price, and that ABS automatically asks a user to reconfirm the price of an order that is entered at a price two or more points away from the last sale.

<sup>4</sup> See Securities Exchange Act Release No. 51613 (April 25, 2005), 70 FR 22736.

<sup>5</sup> See e-mail from Joseph P. Riveiro, Investec (US), Inc. to the Commission, dated May 8, 2005 (“Investec e-mail”).

<sup>5</sup> 17 CFR 200.30–3(a)(12)