

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Jonathan G. Katz,

Secretary.

[FR Doc. 05-18763 Filed 9-20-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52431; File No. SR-NASD-2005-103]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Technical Changes to NASD Rule 3110 and IM-3110

September 14, 2005.

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 September 6, 2005, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6)⁴ thereunder, which renders the proposed rule change effective upon filing with the Commission.⁵ 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

Nasdaq is proposing to amend NASD Rule 3110 to re-label paragraph (d) (Changes in Account Name or Designation) as paragraph (j), and relocate the Interpretive Material 3110 ("IM-3110") to the end of NASD Rule 3110. The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ Nasdaq asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

3100. BOOKS AND RECORDS, AND FINANCIAL CONDITION

3110. Books and Records

(a) through (c) No change.

[(d) Changes in Account Name or Designation]

[Before any customer order is executed, there must be placed upon the memorandum for each transaction, the name or designation of the account (or accounts) for which such order is to be executed. No change in such account name(s) (including related accounts) or designation(s) (including error accounts) shall be made unless the change has been authorized by a member or a person(s) designated under the provisions of NASD rules. Such person must, prior to giving his or her approval of the account designation change, be personally informed of the essential facts relative thereto and indicate his or her approval of such change in writing on the order or other similar record of the member. The essential facts relied upon by the person approving the change must be documented in writing and preserved for a period of not less than three years, the first two years in an easily accessible place, as the term "easily accessible place" is used in SEC Rule 17a-4.]

[For purposes of this paragraph (d), a person(s) designated under the provisions of NASD rules to approve account name or designation changes must pass a qualifying principal examination appropriate to the business of the firm.]

[* * *]

[IM-3110. Customer Account Information]

[(a) Members should be aware that, effective January 1, 1990, any transaction which involves a non-Nasdaq, non-exchange equity security trading for less than five dollars per share may be subject to the provisions of SEC Rules 15g-1 through 15g-9, and those rules should be reviewed to determine if an executed customer suitability agreement is required.]

[(b) Additional information is required to be obtained prior to making recommendations to customers (see Rule 2310) and in connection with discretionary accounts (see Rule 2510).]

[(c) Accounts opened, and recommendations made prior to January 1, 1991 remain subject to former Article III, Sections 2 and 21(c) as previously in effect as set forth in Notice to Members 90-52 (August 1990).]

[* * *]

(d) through (i) No change.

(j) *Changes in Account Name or Designation*

Before any customer order is executed, there must be placed upon the memorandum for each transaction, the name or designation of the account (or accounts) for which such order is to be executed. No change in such account name(s) (including related accounts) or designation(s) (including error accounts) shall be made unless the change has been authorized by a member or a person(s) designated under the provisions of NASD rules. Such person must, prior to giving his or her approval of the account designation change, be personally informed of the essential facts relative thereto and indicate his or her approval of such change in writing on the order or other similar record of the member. The essential facts relied upon by the person approving the change must be documented in writing and preserved for a period of not less than three years, the first two years in an easily accessible place, as the term "easily accessible place" is used in SEC Rule 17a-4.

For purposes of this paragraph (j), a person(s) designated under the provisions of NASD rules to approve account name or designation changes must pass a qualifying principal examination appropriate to the business of the firm.

IM-3110. Customer Account Information

(a) Members should be aware that, effective January 1, 1990, any transaction which involves a non-Nasdaq, non-exchange equity security trading for less than five dollars per share may be subject to the provisions of SEC Rules 15g-1 through 15g-9, and those rules should be reviewed to determine if an executed customer suitability agreement is required.

(b) Additional information is required to be obtained prior to making recommendations to customers (see Rule 2310) and in connection with discretionary accounts (see Rule 2510).

(c) Accounts opened, and recommendations made prior to January 1, 1991 remain subject to former Article III, Sections 2 and 21(c) as previously in effect as set forth in Notice to Members 90-52 (August 1990).

* * * * *

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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 Commission previously approved amendments to NASD Rule 3110 (Books and Records) to create new paragraphs (d) and (i) concerning Changes in Account Name or Designation, and Holding of Customer Mail, respectively.⁶

In reviewing NASD Rule 3110, Nasdaq staff noticed that certain provisions in NASD Rule 3110 were inadvertently labeled as being part of the Interpretive Material, IM-3110 (Customer Account Information). In seeking to re-label these provisions as part of NASD Rule 3110, Nasdaq staff noticed that two paragraphs of NASD Rule 3110 are now labeled as paragraph (d). To avoid confusion, Nasdaq proposes to re-label paragraph (d) (Changes in Account Name or Designation) as paragraph (j). In addition, Nasdaq proposes to move the Interpretive Material, IM-3110, which consists only of paragraphs (a)-(c), and is currently contained in the middle of NASD Rule 3110, to the end of the rule. This change conforms IM-3110 to Nasdaq's general practice of placing Interpretive Material after the rule to which it relates.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁷ which requires, among other things, that Nasdaq 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. Nasdaq believes that this technical change is consistent with the protection of investors and the public interest in that it will avoid any confusion when reading the provisions of NASD Rule 3110.

⁶ See Securities Exchange Act Release No. 49883 (June 17, 2004), 69 FR 35092 (June 23, 2004) (SR-NASD-2002-162).

⁷ 15 U.S.C. 78o-3(b)(6).

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

Nasdaq 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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)⁸ of the Act and Rule 19b-4(f)(6) thereunder.⁹

Nasdaq has requested that the Commission waive the 30-day pre-operative period, which would make the proposed rule operative immediately. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change is solely technical in nature and is intended to alleviate confusion when reading the provisions of NASD Rule 3110. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹⁰

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6). Rule 19b-4(f)(6)(iii) under the Act requires the self-regulatory organization to provide the Commission written notice of its intent to file the proposed rule change at least five business days (or such shorter time as designated by the Commission) before doing so. Nasdaq has requested that the Commission waive the five-day pre-filing notice requirement. The Commission granted Nasdaq's request.

¹⁰ For purposes of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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. Please include File Number SR-NASD-2005-103 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 20549-9303.

All submissions should refer to File Number SR-NASD-2005-103. 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 the 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 File Number SR-NASD-2005-103 and should be submitted on or before October 12, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Jonathan G. Katz,

Secretary.

[FR Doc. 05-18767 Filed 9-20-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52445; File No. SR-NSCC-2005-08]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Codify, Consolidate, and Clarify Financial Responsibility and Operational Capability Rules

September 15, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on August 2, 2005, the National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The purpose of the proposed rule change is to codify, consolidate, and clarify NSCC’s financial responsibility and operational capability rules into NSCC Rule 15 (“Financial Responsibility and Operational Capability”).

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

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.²

(A) Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Clarification of “Participants”

Section 1 of Rule 15 sets forth NSCC’s general authority to establish standards of membership and guidelines for the application of such standards. Section 1 is amended to make clear that it applies to a Member, Non-Clearing Member, Municipal Comparison Only Member, Fund Member, Insurance Carrier Member, TPA Member, or Data Services Only Member and that each such member is referred to as a “participant” in NSCC’s rules.

2. Regular Reporting Required of Participants

Section 2 of Rule 15 is amended to clearly set forth the list of reports and information, such as financial statements and copies of certain regulatory filings, which certain participants are routinely required to submit on a regular basis for NSCC’s risk management purposes. The explicit list of reports and information includes all such reports and information currently required by NSCC under its general authority to monitor compliance with membership standards. The submission requirements applicable to certain categories of NSCC participants previously had been set forth on NSCC’s Web site and were communicated to participants quarterly by NSCC Important Notice. Codifying the requirements in Section 2 of Rule 15 will further facilitate compliance with these reporting requirements.

The codification of the list of reports and information which are required on a routine basis does not restrict NSCC’s current general authority to require additional information in particular instances should NSCC’s risk management procedures so require pursuant to new Section 2 of Rule 15.

The timeframes by which participants are required to submit particular information is deleted from Section 2 of Rule 15 because these timeframes may vary according to external parameters such as, for example, regulatory requirements applicable to a certain class of participants. Section 2 now makes reference to the submission of reports and information within the time periods prescribed by NSCC from time to time. Section 2 also directs participants to provide the information in the form and to the person or department specified by NSCC from time to time. NSCC communicates these submission deadlines and requirements to participants by Important Notices

which are reissued quarterly. In addition, the current submission schedule is posted on NSCC’s Web site, and new participants are advised of the submission schedule in the NSCC acceptance letter. The reference to the timeframe by which reports are due is also deleted from Addendum B (including the version of Addendum B contained in Appendix 1) since it is now set forth clearly in Section 2 of Rule 15.

Section 2 of Rule 15 is further revised to make specific reference to a participant’s obligation to provide amendments and addenda to all reports and to inform NSCC of any extensions granted by its regulator regarding submission of a regulatory report for which NSCC also requires submission. To the extent NSCC’s review includes copies of reports submitted by the participant to its regulator, this will facilitate NSCC’s review process by making each participant responsible for notifying NSCC of an extension rather than requiring NSCC to make inquiries of the participant after NSCC fails to receive a report by the date on which it is otherwise required to be provided to NSCC.

In addition, Section 2 is amended to make specific reference to a participant’s obligation to provide annual financial statements of its guarantor consistent with NSCC’s current risk management review procedures. Currently, these procedures are communicated to participants on NSCC’s Web site, in Important Notices, and in correspondence. Codification of the requirement in Rule 15 will facilitate compliance.

3. Participant Reporting on Certain Changes

Rule 15 is further amended by new Section 3 which codifies a participant’s reporting obligations with respect to certain changes which could have a substantial impact on its business or financial condition, such as: (1) Material organizational changes including mergers, acquisitions, changes in corporate form, name changes, changes in the ownership of a participant or its affiliates, and material changes in management; (2) material changes in business lines, including new business lines undertaken; and (3) defendant status in litigation which could reasonably impact the participant’s financial condition or ability to conduct business. Timely notification of such changes and events enables NSCC to analyze the implications of the event and determine an appropriate course of action for risk management purposes.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by NSCC.