For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55737; File No. SR–NASD–2006–124]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Amendment Nos. 1 and 2 to, and Order Granting Accelerated Approval of, a Proposed Rule Change as Modified by Amendment Nos. 1 and 2 To Require the Provision of Certain Information About the Securities Investor Protection Corporation to Customers

May 10, 2007.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that the National Association of Securities Dealers, Inc. (''NASD'') has filed Amendment Nos. 1 and 2 to the proposed rule change, which, as amended, would adopt proposed NASD Rule 2342 to require NASD members, except those excluded from membership in the Securities Investor Protection Corporation (''SIPC'') or who sell only investments ineligible for SIPC protection, to provide new customers, and all customers annually, with certain information about SIPC. This order provides notice of and solicits comments from interested persons on the proposed rule change as modified by Amendment Nos. 1 and 2, and approves the proposed rule change as amended on an accelerated basis.

II. Description of the Proposal

NASD filed the proposed rule change with the Securities and Exchange Commission (the ''Commission'') on November 9, 2006. The Commission published the proposal for comment in the **Federal Register** on December 13, 2006.[3] The Commission received nine comments in response to the Notice.[4] On February 7, 2007, NASD filed Amendment No. 1 to the proposed rule change, which also responded to the comments.[5] The Commission received one comment in response to Amendment No. 1.[6] All of the comments received by the Commission regarding the proposed rule change are available on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). On April 19, 2007, NASD filed Amendment No. 2 to the proposed rule change, which also responded to the comment on the proposed rule change as modified by Amendment No. 1.[7]

NASD filed the proposed rule change to adopt proposed NASD Rule 2342, which would require NASD members to advise all new customers, in writing, at the opening of an account, and all customers at least once each year that they may obtain information about SIPC, including the SIPC brochure, by contacting SIPC, and to provide such customers with SIPC's telephone number and Web site address. Amendment No. 1 proposed that firms that are excluded from membership in SIPC pursuant to Section 3(a)(2)(A)(i) through (iii) of the Securities Investor Protection Act of 1970 (''SIPA'') and that are not SIPC members be exempt from the requirements of proposed Rule 2342. Amendment No. 2 proposed to exempt firms whose business consists exclusively of the sale of investments that are ineligible for SIPC protection from the requirements of proposed Rule 2342. Below is the text of the proposed rule change, as modified by Amendment Nos. 1 and 2. Proposed new language is in *italics.*

2000. BUSINESS CONDUCT

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2300. Transactions with Customers

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2342. SIPC Information

All members, except those members: (a) that pursuant to Section 3(a)(2)(A)(i) through (iii) of the Securities Investor Protection Act of 1970 (SIPA) are excluded from membership in the Securities Investor Protection Corporation (SIPC) and that are not SIPC members; and (b) whose business consists exclusively of the sale of investments that are ineligible for SIPC protection, shall advise all new customers, in writing, at the opening of an account, that they may obtain information about SIPC, including the SIPC brochure, by contacting SIPC, and also shall provide the Web site address and telephone number of SIPC. In addition, such members shall provide all customers with the same information, in writing, at least once each year. In cases where both an introducing firm and clearing firm service an account, the firms may assign these requirements to one of the firms.

III. Summary of Comments on the Proposal and Amendment No. 1

Two commenters supported the proposed rule change. One believed that the disclosure required by proposed NASD Rule 2342 would remind clients that they are buying a product that is not directly underwritten or supported by a bank or covered by the Federal Deposit Insurance Corporation (''FDIC'').[8] Another believed that public customers would benefit from broader dissemination of information about SIPC.[9]

Seven commenters generally opposed the proposed rule change.[10] Five questioned the need for disseminating the information that would be required by proposed Rule 2342.[11] Two suggested that the proposed rule be revised to mandate that firms include on their Web sites a link to SIPC's Web site.[12] One questioned whether investors need, or are interested in, information about SIPC, suggested that investors are unlikely to read the proposed disclosure, and questioned the cost of implementing it.[13] Another stated that customers will be made

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54871 (December 5, 2006), 71 FR 74970 (December 13, 2006) (SR–NASD–2006–124) (''Notice'').

[4] *See* e-mail from Frederick G. Ferrara, Chief Compliance Office, Panattoni Securities, Inc. dated December 20, 2006 (''Ferrara 1''); e-mail from Philip C. McMorrow, President, Cantella Co., Inc. dated December 21, 2006 (''McMorrow''); e-mail from E.C. Blitz dated December 22, 2006 (''Blitz''); letter from Kenneth M. Cherrier, Chief Compliance Officer, Fintegra, to Nancy M. Morris, Secretary, Commission, dated December 22, 2006 (''Cherrier''); e-mail from Michael A. Pagano, 1st Global Capital Corp. dated December 22, 2006 (''Pagano''); e-mail from Christine E. Saccente, Vice President, Chief Compliance Officer, Operations Manager, Maxwell Noll Inc. dated December 27, 2006 (''Saccente''); e-mail from William R. Sykes, Sykes Financial Services LLC dated December 28, 2006 (''Sykes''); e-mail from John Harris, Chief Executive Officer, BondMart, Inc. dated December 30, 2006 (''Harris''); letter from Noland Cheng, Chairman, SIFMA Operations Committee, to Nancy M. Morris, Secretary, Commission, dated January 12, 2007 (''Cheng'').

[5] Amendment No. 1 modified the text of proposed Rule 2342.

[6] *See* e-mail from Frederick G. Ferrara, Chief Compliance Officer, Panattoni Securities, Inc. dated February 13, 2007 (''Ferrara 2'')

[7] Amendment No. 2 further modified the text of proposed Rule 2342 and proposed changing the effective date of the rule change.

[8] *See* Cherrier.

[9] *See* Cheng.

[10] *See* Ferrara 1; McMorrow; Blitz; Pagano; Saccente; Sykes; Harris.

[11] *See* McMorrow; Blitz; Pagano; Saccente; Sykes; Harris.

[12] *See* Pagano; Saccente.

[13] *See* Pagano.

aware of SIPC at such time as they need the coverage.[14]

In its response to these comments included with Amendment No. 1, NASD stated that, as noted in its initial rule filing, the genesis of the proposal was a U.S. General Accounting Office (''GAO'') [15] report in which the GAO made recommendations to the Commission and SIPC about ways to improve the information available to the public about SIPC and SIPA.[16] Among other things, the GAO recommended that self-regulatory organizations (''SROs'') explore ways to encourage broader dissemination of the SIPC brochure to customers so that they can become more aware of the scope of SIPA's coverage. NASD further stated that, after consulting with its members regarding the costs of providing customers with a copy of the SIPC brochure, NASD determined that the most cost-effective way of making customers aware of the SIPC brochure was to provide them with the information they would need to obtain a copy of the brochure, *i.e.,* by giving them SIPC's address and telephone number so they could call or write SIPC to order a copy of the brochure, and by giving them SIPC's Web site address so they could read the SIPC brochure online. NASD believes that requiring firms to provide customers with SIPC's address, telephone number and Web site at account opening and yearly thereafter would help to further educate customers regarding SIPC and encourage customers to review the SIPC brochure.

Two commenters believed that introducing firms should not be subject to proposed Rule 2342.[17] In response, NASD stated that it believed these commenters' concerns were addressed by a provision in the proposed rule that would allow firms, where both an introducing firm and clearing firm service an account, to assign the requirements of proposed Rule 2342 to one of the firms.

Five commenters believed that, as initially proposed, Rule 2342 would apply too broadly. One of these commenters believed that institutional customers should be exempt from the proposed rule.[18] Two of these commenters believed that NASD members that are exempt from membership in SIPC or from carrying SIPC coverage should be exempt from the proposed rule.[19] Another believed that firms selling only investment products that are ineligible for SIPC protection should be exempt from the proposed rule.[20]

In response to these comments, NASD stated, ''SIPA excludes certain categories of registered brokers and dealers from membership in SIPC, including 'persons whose business as a broker or dealer consists exclusively of * * * the distribution of shares of registered open end investment companies or unit investment trusts * * * the sale of variable annuities * * * the business of insurance, or * * * the business of rendering investment advisory services to one or more registered investment companies or insurance company separate accounts.' '' [21] NASD further stated that SIPA provides that all other persons registered as brokers or dealers under Section 15(b) of the Securities Exchange Act of 1934 [22] are required to be members of SIPC. NASD believed that firms that are required to be SIPC members should also be required to make the disclosures required by proposed NASD Rule 2342, regardless of the products currently being sold. Therefore, NASD did not propose to exempt any SIPC members from the requirements of proposed NASD Rule 2342.

However, NASD agreed with the commenters who believed that NASD members that are excluded from membership in SIPC should not be subject to the proposed rule, and, in Amendment No. 1, proposed to exclude from the requirements of proposed NASD Rule 2342 any member that is excluded from membership in SIPC.

One commenter believed that institutional customer accounts should be exempt from the proposed rule's disclosure requirements on the grounds that institutional customers are sophisticated investors that are well aware of SIPC and the protections it affords.[23] This commenter stated that institutional customers generally settle transactions in delivery versus payment/receive versus payment (''DVP/RVP'') accounts, and that most of them were likely to opt out of receiving quarterly customer account statements under NASD Rule 2340. This commenter also stated that receiving the disclosures that would be required by proposed Rule 2342 annually from each broker-dealer through which an institution executes transactions would create a flood of unnecessary and redundant disclosures that institutional customers would simply discard.

In response, NASD stated that it believed the benefit to institutional investors of receiving the SIPC disclosures at account opening and yearly thereafter outweighs any inconvenience that might be incurred. NASD stated that although many institutional investors are likely to be sophisticated investors, there are those that are not, and that, to the extent the required disclosures may make institutional investors more aware of SIPC and the protections it affords, NASD believed that the dissemination of the required information would be worthwhile. Therefore, NASD determined not to exempt institutional investors from the requirements of proposed Rule 2342.

After NASD filed Amendment No. 1, one commenter submitted a second letter, in which he further contended that firms that are SIPC members but that only sell investment products that are ineligible for SIPC protection may violate Article 11, Section 4(g)(2) of the SIPC By-Laws (Advertisement of Membership) if they are not exempt from the requirements of proposed Rule 2342.[24] In response to this comment, NASD agreed that proposed Rule 2342 should not require members whose business consists exclusively of the sale of investments that are ineligible for SIPC protection to distribute SIPC's contact information to their customers pursuant to proposed Rule 2342. Accordingly, in Amendment No. 2, NASD modified proposed Rule 2342 to exempt from the rule's requirements members whose business consists exclusively of the sale of investments that are ineligible for SIPC protection.

IV. Discussion and Commission's Findings

NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act [25] for approving the proposed rule change prior to the 30th day after publication in the **Federal Register.** NASD also proposed an effective date of 180 days following Commission approval, in order to give member firms sufficient time to make changes to their customer documentation and systems. After careful consideration, the Commission finds that the proposed rule change is consistent with the Act, and in particular, with Section 15A(b)(6) of the

[14] *See* Sykes.

[15] The GAO has since been renamed the Government Accountability Office.

[16] *See* GAO, *Securities Investor Protection: Steps Needed to Better Disclose SIPC Policies to Investors,* GAO–01–653 (May 25, 2001).

[17] *See* Blitz; Pagano.

[18] *See* Cheng.

[19] *See* Cherrier; Sykes.

[20] *See* Ferrara 1.

[21] *See* Amendment No. 1 (citing 15 U.S.C. 78ccc(a)(2)(A)).

[22] 15 U.S.C. 78o(b).

[23] *See* Cheng.

[24] *See* Ferrara 2.

[25] 15 U.S.C. 78s(b)(2).

Act,[26] which provides, among other things, that NASD rules must be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.[27] The Commission believes that NASD has adequately responded to concerns about the proposed rule change raised by commenters, and that the proposed rule change is consistent with the provision of the Exchange Act noted above. In particular, proposed NASD Rule 2342 should help to improve investors' awareness of SIPC's policies and practices, and the scope of coverage available under SIPA.

Pursuant to Section 19(b)(2) of the Act,[28] the Commission finds good cause for approving the proposed rule change before the thirtieth day after the date of publication of notice of filing thereof. Accelerating approval and delaying the effective date of the proposed rule change will give NASD additional time to notify its members about the requirements of the proposed rule and help to ensure that firms have sufficient time to efficiently make the changes to their customer documentation and systems needed to comply with the rule.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment Nos. 1 and 2, 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–2006–124 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–124. 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–2006–124 and should be submitted on or before June 6, 2007.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–NASD–2006–124), as modified by Amendment Nos. 1 and 2, be, and it here is, approved on an accelerated basis, and shall be effective 180 days following the date of this order.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Florence E. Harmon,

Deputy Secretary.

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[26] 15 U.S.C. 78o–3(b)(6).

[27] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 15 U.S.C. 78s(b)(2).

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55732; File No. SR–NFA–2007–02]

Self-Regulatory Organization; National Futures Association; Notice of Filing and Immediate Effectiveness of a Proposed Interpretive Notice to Compliance Rule 2–4 Regarding Disclosure Guidelines for FCMs Offering Sweep Accounts

May 9, 2007.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act") [1], and Rule 19b–7 under the Act,[2] notice is hereby given that on February 27, 2007, National Futures Association ("NFA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which Items have been substantially prepared by NFA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. NFA, on February 26, 2007, submitted the proposed rule change to the Commodity Futures Trading Commission ("CFTC") for approval. The CFTC approved the proposed rule change on March 12, 2007.

I. Self-Regulatory Organization's Description of the Proposed Rules

Section 15A(k) of the Act [3] makes NFA a national securities association for the limited purpose of regulating the activities of NFA members ("Members") who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Exchange Act.[4] The new Interpretive Notice to NFA Compliance Rule 2–4 entitled "Disclosure Guidelines for FCMs Offering Sweep Accounts" ("Interpretive Notice") will apply to all futures commission merchant ("FCM") Members, including those who are registered as security futures brokers or dealers under Section 15(b)(11). The Interpretive Notice applies certain disclosure guidelines to FCM-offered sweep account programs that manage cash balances.

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

NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 15 U.S.C. 78o–3(k).

[4] 15 U.S.C. 78o(b)(11).