

trading in SFCs. The Commission notes it approved NASD's original filing as a temporary pilot to give members of the public an opportunity to comment on the substance of the proposed rule change before it requests permanent approval. The NASD has responded to the comments received, as described above. Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act, to approve the proposed rule change prior to the thirtieth day after publication of the notice of filing.

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>26</sup> that the proposed rule change (File No. SR–NASD–2003–45) be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>27</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47558; File No. SR–NASD–2003–36]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to NASD Rule 2340

March 21, 2003.

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 March 12, 2003, 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. Pursuant to Section 19(b)(3)(A)(i) of the Act,<sup>3</sup> and Rule 19b–4(f)(1) thereunder,<sup>4</sup> NASD has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposed rule change effective upon filing with the

Commission. 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

NASD is proposing to amend NASD Rule 2340 to eliminate outdated and unnecessary references to Rule 15c3–1 under the Act. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

\* \* \* \* \*

#### 2200. Transactions with Customers

\* \* \* \* \*

#### 2340. Customer Account Statements

(a) through (b) No change.

(c) Definitions

For purposes of this Rule, the following terms will have the stated meanings:

(1) No change.

(2) a “general securities member” refers to any member [which] *that* conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEC Rule 15c3–1(a)[, except for paragraphs (a)(2) and (a)(3)]. Notwithstanding the foregoing definition, a member [which] *that* does not carry customer accounts and does not hold customer funds [and] *or* securities is exempt from the provisions of this section.

(3) through (5) No change.

(d) No change.

\* \* \* \* \*

### 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

NASD represents that the proposed rule change would eliminate from NASD Rule 2340 outdated and

unnecessary references to Rule 15c3–1 under the Act. NASD Rule 2340 requires that a general securities member send quarterly account statements to customers. Rule 2340(c)(2) defines a general securities member as “any member which conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEC Rule 15c3–1(a), except for paragraphs (a)(2) and (a)(3).” NASD represents that when the SEC amended Rule 15c3–1 to change the net capital requirements of certain broker-dealers, the SEC also moved, with some minor modifications, many of the provisions that were in paragraphs (a)(2) and (a)(3) into new Rule 15c3–1(a)(2)(iv), (v), and (vi) under the Act.<sup>5</sup>

NASD represents that, besides being obsolete, the references to old paragraphs (a)(2) and (3) are unnecessary in light of the broader exemption that already exists in NASD Rule 2340(c)(2). Specifically, the second sentence of NASD Rule 2340(c)(2) excludes from the definition of a general securities member any member that “does not carry customer accounts and does not hold customer funds and securities.” Because the broker-dealers described in old paragraphs (a)(2) and (a)(3) of Rule 15c3–1 do not carry customer accounts or hold customer funds or securities, NASD represents that the exemption in NASD Rule 2340(c)(2) automatically excludes them from the definition of general securities member.

NASD represents that it is not proposing new references to the amended provisions of Rule 15c3–1 under the Act because the broker-dealers described in these provisions also do not carry customer accounts or hold customer funds or securities, and therefore, are excluded from the definition of general securities member by the exemption currently provided in NASD Rule 2340(c)(2). In addition, NASD represents that deleting such

<sup>5</sup> Specifically, old paragraph (a)(2) described introducing broker-dealers that do not carry customers' accounts, but that occasionally receive customer funds and securities. Old paragraph (a)(2) has been replaced by Rule 15c3–1(a)(2)(iv), which describes broker-dealers that introduce customer accounts and that also receive, but do not hold, customer funds or securities and Rule 15c3–1(a)(2)(vi), which describes broker-dealers that introduce customer accounts but do not receive or hold customer funds or securities or carry customer accounts. Old paragraph (a)(3) described broker-dealers that engage solely in the sale of redeemable shares of registered investment companies and certain other share accounts. These broker-dealers also do not hold customer funds or securities. This category is now described in Rule 15c3–1(a)(2)(v). As a result of these changes, the references to Rule 15c3–1 in NASD Rule 2340 no longer refer to the sections that were intended when NASD Rule 2340 was adopted.

<sup>26</sup> 15 U.S.C. 78s(b)(2).

<sup>27</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.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>4</sup> 17 CFR 240.19b–4(f)(1).

references in NASD Rule 2340 prevents the need to change the rule if the broker-dealers described in paragraphs (a)(2)(iv), (v), and (vi) are moved to other provisions in Rule 15c3-1 under the Act.

In addition, NASD represents that to ensure that Rule 2340(c)(2) more closely reflects the language in Rule 15c3-1 and the NASD staff's long-standing interpretation, the proposed rule change amends the exclusion from the definition of a general securities member for "a member that does not carry customer accounts and does not hold customer funds and securities" to state "a member that does not carry customer accounts and does not hold customer funds or securities" (emphasis added).

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,<sup>6</sup> which requires, among other things, that NASD's 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 represents that the proposed rule change would amend NASD Rule 2340 to eliminate outdated and unnecessary references to Rule 15c3-1 under the Act.

### *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

The proposed rule change has become immediately effective pursuant to section 19(b)(3)(A)(i) of the Act,<sup>7</sup> and Rule 19b-4(f)(1) thereunder,<sup>8</sup> in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of such proposed rule change, the Commission

may summarily abrogate the 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.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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. 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 NASD. All submissions should refer to File No. SR-NASD-2003-36 and should be submitted by April 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47554; File No. SR-NASD-2003-39]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. Relating to Anti-Internalization Qualifier Values**

March 21, 2003.

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 March 12, 2003, The National Association of Securities Dealers, Inc. ("NASD" or

"Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to 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 Nasdaq. On March 14, 2003, Nasdaq filed Amendment No. 1 to the proposal.<sup>3</sup> The Commission is publishing this notice, as amended, 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 proposes to allow the Quotes/Orders of Nasdaq Quoting Market Participants and NNMS Order Entry Firms in its SuperMontage system to interact with Quotes/Orders entered by that same participant on the other side of the market based strictly on the execution algorithm selected. Nasdaq also proposes to codify the function that precludes the Quotes/Orders of Nasdaq Quoting Market Participant or NNMS Order Entry Firms from interacting with Quotes/Orders entered by the same participant on the other side of the market. The text of the proposed rule change follows.

Proposed new language is *italicized*; proposed deletions are in [brackets].

### **4710. Participant Obligations in NNMS**

(a) No Change.

(b) Non-Directed Orders.

(1) General Provisions—A Quoting Market Participant in an NNMS Security, as well as NNMS Order Entry Firms, shall be subject to the following requirements for Non-Directed Orders:

(A) Obligations for each NNMS security in which it is registered, a Quoting Market Participant must accept and execute individual Non-Directed Orders against its quotation, in an amount equal to or smaller than the combination of the Displayed Quote/Order and Reserve Size (if applicable) of such Quote/Order, when the Quoting Market Participant is at the best bid/best offer in Nasdaq. This obligation shall also apply to the Non-Attributable Quotes/Orders of NNMS Order Entry Firms. Quoting Market Participants, and

<sup>3</sup> See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 14, 2003 ("Amendment No. 1"). In Amendment No. 1, Nasdaq clarified that the Anti-Internalization Qualifier ("AIQ") "I" Value for Nasdaq Quoting Market Participants would be available on May 12, 2003. For the purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on March 14, 2003, the date Nasdaq filed Amendment No. 1.

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

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>8</sup> 17 CFR 240.19b-4(f)(1).

<sup>9</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.