

termination of the rollout of the RMM Program. In this regard, the Exchange anticipates notifying all RMMs of the products they have received as part of their appointment by approximately April 15, 2005. The Exchange anticipates that the RMM rollout will begin April 28, 2005. Even with respect to classes that rollout towards the end of the period, RMMs would still have no fewer than 30 days during which to quote before they are subject to being assessed an inactivity fee. In the event an RMM uses a leased membership to receive appointed products, the lessee (and not the lessor) would be assessed the fee. The Exchange believes it is reasonable to assess the fee upon the lessee in this instance because it is the party that requested the appointment, received the appointment, and failed to quote the appointment.

The Exchange provides for one exception to the inactivity fee. RMM organizations that relinquish appointments during the requisite period by virtue of the fact that they obtained an appointment in the identical product either as a Designated Primary Market-Maker ("DPM") or Electronic DPM ("e-DPM") would not be required to pay the inactivity fee. The Exchange believes it is reasonable to exempt an RMM from payment of the fee in this limited instance because it would be required to quote the product in its new status as DPM or e-DPM.

## 2. Statutory Basis

CBOE believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.<sup>5</sup> Specifically, CBOE believes the proposed rule change is consistent with section 6(b)(4) of the Act<sup>6</sup> in that it provides for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

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

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were solicited or received comments.

## III. Date of Effectiveness of the Proposed Rule Change and Timing of 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 Exchange 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 Number SR-CBOE-2005-22 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-CBOE-2005-22. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal

office of the CBOE. 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-CBOE-2005-22 and should be submitted on or before April 11, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. E5-1211 Filed 3-18-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51368; File No. SR-NASD-2005-004]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Annual Compliance Meetings

March 14, 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 January 13, 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. On March 1, 2005, NASD filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On March 9, 2005, NASD filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

<sup>7</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> In Amendment No. 1, the NASD further clarified that the scope of NASD Rules 3010(a), 3010(a)(3), and 3010(b)(1), specifically extends to registered representatives and registered principals, as well as other associated persons.

<sup>4</sup> In Amendment No. 2, the NASD filed a partial amendment to the proposed rule change to remove the underlining from the term "applicable NASD Rules" in NASD Rule 3010(a), as it is part of the existing rule text.

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

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

NASD proposes to amend NASD Rule 3010(a) to require that registered principals, in addition to registered representatives, attend an annual compliance meeting. NASD also is proposing a technical amendment to NASD Rule 3010(a) to clarify that each member is required to establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated persons. Below is the text of the revised rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

### 3010. Supervision

#### (a) Supervisory System

Each member shall establish and maintain a system to supervise the activities of each registered representative, *registered principal*, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules. Final responsibility for proper supervision shall rest with the member. A member's supervisory system shall provide, at a minimum, for the following:

(1) through (2) No Change.

(3) The designation as an office of supervisory jurisdiction (OSJ) of each location that meets the definition contained in paragraph (g) of this Rule. Each member shall also designate such other OSJs as it determines to be necessary in order to supervise its registered representatives, *registered principals*, and other associated persons in accordance with the standards set forth in this Rule, taking into consideration the following factors:

(A) Whether registered persons at the location engage in retail sales or other activities involving regular contact with public customers;

(B) Whether a substantial number of registered persons conduct securities activities at, or are otherwise supervised from, such location;

(C) Whether the location is geographically distant from another OSJ of the firm;

(D) Whether the member's registered persons are geographically dispersed; and

(E) Whether the securities activities at such location are diverse and/or complex.

(4) through (6) No Change.

(7) The participation of each registered representative *and registered principal*, either individually or

collectively, no less than annually, in an interview or meeting conducted by persons designated by the member at which compliance matters relevant to the activities of the representative(s) *and principal(s)* are discussed. Such interview or meeting may occur in conjunction with the discussion of other matters and may be conducted at a central or regional location or at the representative's(') *or principal's(')* place of business.

#### (b) Written Procedures

(1) Each member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives, *registered principals*, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of NASD [this Association].

(2) through (4) No Change.

(c) through (g) No Change.

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

#### 1. Purpose

NASD proposes to amend NASD Rule 3010(a)(7) to require that registered principals, in addition to registered representatives, attend an annual compliance meeting. NASD Rule 3010(a)(7) currently requires the attendance of registered representatives at annual compliance meetings, but it does not require the attendance of registered principals. NASD believes that registered principals also should be required to attend such meetings given the supervisory and compliance-related functions that principals perform and that the primary purpose of these meetings is to discuss compliance issues and keep registered persons current on changing compliance requirements or changes in the firm. Accordingly, NASD proposes to amend NASD Rule 3010(a)(7) to require that all registered principals, in addition to registered representatives, attend an annual compliance meeting in accordance with the Rule.

Further, according to the NASD, although registered principals are considered associated persons and thus are included in the scope of NASD Rule 3010(a), registered principals are not specifically listed in NASD Rule 3010(a). Therefore, NASD proposes a technical amendment to NASD Rule 3010(a) to clarify that each member is

required to establish and maintain a system to supervise the activities of each registered representative, registered principal, as well as other associated persons.

NASD represents that the proposal clarifies that this provision applies to registered representatives and registered principals, who are considered to be associated persons, as well as all other associated persons. To be consistent with this proposed amendment to NASD Rule 3010(a), NASD is proposing similar changes to NASD Rules 3010(a)(3) and 3010(b)(1) to clarify that the scope of these rules extends to registered representatives and registered principals, as well as other associated persons.<sup>5</sup> NASD is also proposing to replace a reference to "Association" with "NASD" in the text of NASD Rule 3010(b)(1) to reflect the fact that NASD no longer refers to itself using its full corporate name, "Association," or "the NASD."

NASD will announce the effective date of the proposed rule change in an *NtM* to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the *NtM* announcing Commission approval.

#### 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A of the Act,<sup>6</sup> in general and with section 15A(b)(6) of the Act,<sup>7</sup> in particular, 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 the proposed rule change to NASD Rule 3010(a)(7) will increase the level of interaction between registered representatives and principals with respect to compliance issues and will assist firms in ensuring that all their registered persons remain current on changing compliance requirements and changes in the firms. NASD believes that the technical amendments to NASD Rules 3010(a), 3010(a)(3), and 3010(b)(1) will further clarify members' obligations with respect to their registered representatives and registered principals, as well as other associated persons.

<sup>5</sup> See Amendment No. 1, *supra* note 3.

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

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

### *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.

### *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, as amended, 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, as amended, 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-NASD-2005-004 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2005-004. 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-2005-004 and should be submitted on or before April 11, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-51362; File No. SR-NSCC-2003-11]

### **Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change To Amend the Criteria Used To Place Members on Surveillance Status and To Eliminate Member and Applicant Financial Responsibility and Operational Capability Questionnaires**

March 11, 2005.

#### **I. Introduction**

On May 27, 2003, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on June 17, 2003, September 15, 2003, December 20, 2004, and March 3, 2005,<sup>1</sup> amended proposed rule change File No. SR-NSCC-2003-11 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>2</sup> Notice

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> In the December 20, 2004, and March 3, 2005, amendments, NSCC elaborated on how it will apply and monitor the matrix. The amendments did not modify the substance of the proposed rule change and therefore did not require republication of notice.

<sup>2</sup> 15 U.S.C. 78s(b)(1).

of the proposed rule change was published in the **Federal Register** on February 3, 2004.<sup>3</sup> No comment letters were received. For the reasons discussed below, the Commission is now granting approval of the proposed rule change.

## **II. Description**

### *A. Risk Matrix*

Under the current NSCC rules, management has the ability to place on surveillance status a member that is experiencing conditions which may have an adverse financial or operational impact on NSCC. Once placed on surveillance status, NSCC closely monitors the member's condition. The current criteria for placing members on surveillance status are broadly written and capture many NSCC members that pose minimal financial or operational risk to NSCC. This creates administrative burdens for NSCC staff who must more closely monitor these members who pose minimal risk.

To remedy this problem, NSCC has developed new criteria for placing members on surveillance. All full service firms for which NSCC guarantees their trades will be assigned a rating that is generated by entering financial data of the member into a risk assessment matrix ("Matrix"). Those members with a "weak" rating, which are deemed to pose a relatively higher degree of risk to NSCC, will be placed on an internal watch list and will be monitored more closely. Members placed on the watch list may be required to submit additional financial reports and data and/or make additional clearing fund deposits.

The Matrix is used by NSCC and its affiliated clearing agency, Fixed Income Clearing Corporation ("FICC"). Specifically, in order to run the Matrix, credit risk staff uses the financial data of each applicable NSCC member and the financial data of each applicable member of FICC. In this way, each applicable member of FICC and NSCC is rated against other applicable members of FICC and NSCC. Credit risk staff approaches its analysis of members pursuant to the new procedures in the following manner. First, as mentioned above, domestic broker-dealers and domestic banks are run through the Matrix and assigned a rating. Low-rated members are placed on the watch list. At this point, credit risk staff may downgrade a particular member's score based on various qualitative factors. (For example, one qualitative factor might be that the member in question received a

<sup>3</sup> Securities Exchange Act Release No. 49123 (January 23, 2004), 69 FR 5231.