(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal offices of MSTC and MCC. All submissions should refer to file numbers SR–MSTC–96–04 and SR–MCC–96–04 and should be submitted by September 10, 1996.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–21158 Filed 8–19–96; 8:45 am]

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[11] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–37561; File No. SR–NASD–96–14]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Requirement That Members Provide Information to Other Regulators for Regulatory Purposes

August 13, 1996.

I. Introduction

On April 4, 1996, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Rules 8210 and 8220.[3] The proposed rule change was published for comment in the Federal Register on May 6, 1996.[4] The Commission received two comment letters opposing the proposal.[5] The NASD submitted two letters supporting its proposal and responding to the Banc One Letter and the SCG Letter.[6]

II. Background

Currently, Rule 8210 of the NASD's Procedural Rules provides that the NASD's District Business Conduct Committees (''DBCC''), Board of Governors (''Board''), or any duly authorized members or agents of the Committees or Board may require members and associated persons to provide information, and may investigate a member's books and records, in connection with investigations or proceedings conducted by the NASD. The NASD periodically receives requests from other regulatory organizations with whom the NASD has entered into agreements to share regulatory information, including self-regulatory organizations (''SROs'') who participate in the Intermarket Surveillance Group (''ISG''),[7] for information from NASD members in connection with investigations being conducted by these regulators. Rule 8210, however, does not expressly permit the NASD to require members to provide information in connection with investigations being conducted by other regulatory organizations, or to bring disciplinary action against a member that refuses to cooperate.

III. Description of Proposal

The NASD proposes to amend NASD Rules 8210 and 8220. The NASD is proposing to amend Rule 8210 to require that members or persons associated with a member[8] provide information and access to their books, records, and accounts to any DBCC, the Market Surveillance Committee (''MSC''), or the Board, or any duly authorized members or agents of the Committees or Board for certain purposes. Specifically, the proposal would require the member or persons associated with a member to provide information to the above-mentioned Committees, Board, and members and agents thereof for the purpose of any investigation, or determination as to filing of a complaint or any hearing of any complaint against any member of the Association or any person associated with a member made or held by another domestic or foreign SRO, association, securities or contract market or regulator of these markets, with whom the Association has entered into an agreement providing for the exchange of information and other forms of material assistance for market surveillance, investigative, enforcement or other regulatory purposes. By amending Rule 8210, the NASD also will have a clear basis to discipline members and associated persons who fail to provide information to other domestic or foreign SROs, associations, securities or contract markets or regulators of such markets with whom the NASD has information sharing agreements. The NASD also proposes to amend Rule 8220 to authorize any Market Surveillance Committee to require any

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On April 19, 1996, the NASD filed Amendment No. 1 to the proposed rule change. Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Special Counsel, Division of Market Regulation, SEC, dated April 19, 1996.

[4] *See* Securities Exchange Act Release No. 37150 (Apr. 29, 1996), 61 FR 20299 (May 6, 1996) (notice of File No. SR–NASD–96–14).

[5] *See* Letter from Steven Alan Bennett, Senior Vice President and General Counsel, Banc One Corporation, to Jonathan G. Katz, Secretary, SEC, dated May 28, 1996 (''Banc One Letter''), and Letter from Joseph W. Mays, Jr., President, Securities Consulting Group, Inc. (''SCG'') to Jonathan G. Katz, Secretary, SEC, dated June 27, 1996 (''SCG Letter'').

[6] *See* Letter from John Ramsay, Deputy General Counsel, NASD Regulation, Inc. (''NASDR''), to Katherine England, Assistant Director, Division of Market Regulation, SEC, dated July 2, 1996, and Letter from John Ramsay, Deputy General Counsel, NASDR, to Katherine England, Assistant Director, Division of Market Regulation, SEC, dated July 19, 1996.

[7] The ISG is an organization of securities industry self-regulatory organizations (''ISG/SROs'') formed in 1983 to coordinate and develop intermarket surveillance programs designed to identify and combat fraudulent and manipulative acts and practices. In order to promote its purposes, members agree to exchange such information as is necessary for ISG members to perform their self-regulatory and market surveillance functions. The NASD has been a member of the ISG since its formation.

The ISG's self-regulatory organization members (ISG/SROs) include all of the registered securities exchanges and associations: American Stock Exchange (AMEX), Boston Stock Exchange (BSE), Chicago Board Options Exchange (CBOE), Chicago Stock Exchange (CHX), Cincinnati Stock Exchange (CSE), National Association of Securities Dealers, Inc. (NASD), New York Stock Exchange (NYSE), Pacific Stock Exchange (PSE), and Philadelphia Stock Exchange (PHLX). In addition, other domestic contract markets and foreign SROs have been granted ''affiliate'' membership in the ISG: Alberta Stock Exchange (ASE), Amsterdam Stock Exchange (AMSE), Australian Stock Exchange (ASX), Chicago Board of Trade (CBOT), Chicago Mercantile Exchange (CME), London International Financial Futures and Options Exchange (LIFFE), London Stock Exchange (LSE), Montreal Exchange (ME), New York Futures Exchange (NYFE), Securities and Futures Authority (SFA), Toronto Stock Exchange (TSE), and the Vancouver Stock Exchange (VSE). ISG/SROs and ISG affiliates are referred to herein as ''ISG participants.''

[8] The term ''persons associated with a member'' includes persons no longer associated with a member when the persons are subject to the Association's jurisdiction to report information.

member to submit a report in writing with regard to any matter connected with such member's business or business practices, and to inspect the books, records and accounts of any member.[9]

IV. Summary of Comments

The Commission received two negative comment letters regarding the proposal to amend Rules 8210 and 8220.[10] The issues raised therein, together with responses by the NASD are discussed below.

In the Banc One Letter, Banc One objects to the proposed rule change as being overly broad and as subjecting members to jurisdictions that might not otherwise have authority over such members. Banc One states that while the NASD has the authority to require its members to produce books, records and other information, it has the responsibility to protect its members from unwarranted investigations that are costly and time consuming and should be undertaken through the proper authorities at the NASD. Banc One states that the NASD already has examination, surveillance, and enforcement authority over its members and that to extend this authority to other self-regulatory organizations or governmental agencies is unnecessary. Banc One also objects to the proposed rule as being potentially costly and stated that the proposed rule seems to tip the balance between the efficient operation of broker-dealers without regulatory interference and the fight against manipulative and fraudulent activities in favor of the latter and to the detriment of the former. Lastly, Banc One states that the proposed rule has no provision to protect confidential or proprietary information provided to other regulators and that members should not be required to provide the information without receiving the protections provided by the NASD.

In response to the Banc One Letter, the NASD states that the NASD is not subjecting, and does not have the authority to subject, members and their associated persons to the jurisdictions of regulatory authorities beyond the limits that currently apply under existing legal standards. The NASD states that it is making explicit that under its own jurisdiction the NASD has the authority, through the Board, the MSC or any DBCC, to require members to respond orally or in writing and to investigate the books and records of the member with regard to investigations and other regulatory actions by other regulators with whom the NASD has entered into information sharing agreements. According to the NASD, these entities would direct their requests to the NASD, which will serve as the intermediary between the member and the requesting entity. Moreover, the NASD states that all requests by these entities would be subject to the NASD's rules and regulations. Therefore, members or associated persons required to provide information under the proposed rule would continue to have the same rights and procedural protections that they would have if the NASD had initiated the request for information.

The NASD states that it recognizes that the imposition of any rule or regulation may result in certain administrative, compliance or enforcement costs, however, the NASD does not believe that the proposed rule will impose excessive regulatory interference at the expense of broker-dealer efficiency. Moreover, the NASD states that the authority provided under the proposed rule is discretionary, and, therefore, it may refuse another entity's request for information if, for example, the purpose of the request falls outside the purposes of the proposed rule.

Finally, the NASD states that, as a member of the ISG, it is bound by certain restrictions on information obtained under the ISG agreement. Among these restrictions, is the requirement that a recipient of the information obtain written consent of the party furnishing the information prior to making the information available to its non-regulatory departments or any subsidiary or affiliated entity.

In the SCG Letter, the SCG objects to the NASD's proposal as being unconstitutional. The SCG argues that the proposed rule violates NASD members' right of due process and the right of privacy as it does not require clients of members to give their permission for their confidential files to be released. The SCG also inquires whether a client of a NASD member could have a meritorious claim against the NASD or the NASD member if a NASD member released private and confidential information.

In response to the SCG Letter, the NASD states that constitutional safeguards against the deprivation of certain rights do not apply to the NASD because the NASD is not a governmental entity. Nevertheless, the NASD states that any information provided under the proposed rule may be used only for legitimate regulatory and enforcement purposes. The NASD states that ISG participants are bound by certain restrictions on information obtained from other ISG participants for regulatory and enforcement purposes. Under the ISG agreement, information obtained by ISG participants may not be made available by the recipient to its non-regulatory departments or any subsidiary or affiliated entity without the written consent of the party furnishing the information, and may only be provided to the SEC or Commodity Futures Trading Commission (''CFTC''), or pursuant to an order of the court or other lawful process, or as is necessary for conducting any investigation or disciplinary proceeding.

V. Discussion

After careful consideration of the comments and the NASD's responses thereto, the Commission has determined to approve the proposed rule change. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Association, and, in particular, with the requirements of Section 15A(b)(6) of the Act,[11] which require, among other things, that the rules of the Association be designed to foster cooperation and coordination with persons engaged in regulating securities transactions. The proposed rule change is consistent with these objectives in that it clarifies the Association's authority to require members and persons associated with a member to provide information to any DBCC, the MSC, or the Board, or any duly authorized members or agents of the Committees or Board for regulatory purposes and to discipline those members or persons associated with members who fail or refuse to provide such information. The Commission notes that most of the other ISG participants have amended their rules to clarify their investigatory and information sharing authority.[12]

[9] *See* Amendment No. 1, *supra* note 3.

[10] *See supra* note 5.

[11] 15 U.S.C. § 78o–3.

[12] The CBOE recently amended Rule 15.9(b) to require its members and associated persons, at the request of the CBOE, to furnish testimony, documentary evidence or other information in connection with any inquiry by a domestic or foreign self-regulatory organization, association, contract market, or regulator of such market with whom the CBOE has entered into an agreement providing for the exchange of information and other forms of mutual assistance for market surveillance, investigative, enforcement and regulatory purposes. Securities Exchange Act Release No. 35403 (Feb. 22, 1995), 60 FR 10884 (Feb. 28, 1995) (order approving File No. SR–CBOE–94–39). The PSE recently amended Rule 10.2(d) to require PSE members, member organizations, persons associated with a member or member organization, and other persons or entities over whom the PSE has jurisdiction pursuant to Rule 10.1(b) to testify before another

The Commission believes that the amendment to Rule 8210, requiring members and associated persons to provide information to the NASD for the purpose of investigations made by another domestic or foreign SRO, association, securities or contract market or regulator of the markets, for market surveillance, investigative, enforcement or other regulatory purposes is appropriate. As previously in effect, Rule 8210 may have limited the NASD by not clearly providing the NASD's Committees and Board with the authority to require members to provide such information. Moreover, Rule 8210 did not provide the MSC with any authority to require members and associated persons to provide information. By adding the MSC to the list of entities, which may require members and associated persons to provide information and expanding the circumstances under which these entities may require information, the amendment furthers the interest of the public and provides for the protection of investors by allowing the Association to assist other regulators to conduct prompt inquiries into possible trading violations and other possible misconduct.

The Commission also believes that the amendment to Rule 8210 provides the Association with a basis on which to initiate a disciplinary proceeding when those under its jurisdiction fail to cooperate with requests for information, and, therefore, furthers the interest of the public and provides for the protection of investors by allowing the Association to appropriately discipline those members that engaged in misconduct.

The Commission also believes that the amendment to Rule 8220, expanding the NASD's authority to require a member or persons associated with a member to comply with any requests to report, orally or in writing, submit books, records, or accounts, for the purpose of any investigation initiated by the NASD or another entity will further the interest of the public and provides for the protection of investors by allowing certain organizations and associations to acquire information necessary to ensure that NASD members are conducting business in conformance with applicable laws and regulations.

Finally, the Commission believes that the proposed rule change achieves a reasonable balance between the need for regulatory cooperation and protection of the procedural rights of NASD members and others from who information or testimony is requested. The rule provides the Association with the authority to seek cooperation by certain persons with respect to inquiries and investigations resulting from regulatory agreements between the Association and other SROs and associations while providing any person or entity required to furnish information or testimony pursuant to the rule with the same procedural rights that they would have as if the request were pursuant to an NASD initiated inquiry or investigation.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NASD–96–14) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

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SRO and to furnish information in connection with a regulatory inquiry, investigation, examination, or disciplinary proceeding resulting from an agreement entered into by the PSE pursuant to Rule 14.1. Securities Exchange Act Release No. 35646 (Apr. 25, 1995), 60 FR 21227 (May 1, 1995) (order approving File No. SR–PSE–95–02). The NYSE recently amended Rules 27, 476(a)(11), and 477 to require persons under Exchange jurisdiction to comply with information requests from domestic commodities markets and associations and foreign self-regulatory organizations and associations as well as from domestic securities markets. Securities Exchange Act Release No. 37476 (July 24, 1996) (order approving File No. SR–NYSE–95–43). Currently, Art. V, Sec. 4(a) of the AMEX Rules facilitates examinations being conducted by another exchange.

[13] 15 U.S.C. § 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

[Release No. 34–37560; File No. SR–NYSE–96–24]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Exchange's Weekly Bulletin

August 13, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 8, 1996, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') 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 the self-regulatory organization. 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

The NYSE proposes to amend Paragraphs 702.02, ''Timetable for Original Listing of Securities Other than Debt Securities,'' and 703.01, ''General Information,'' of the NYSE's Listed Company Manual (''Manual'') to eliminate the requirement that the Exchange publish a notice of receipt of a listing application in the Exchange's Weekly Bulletin prior to authorizing the listing application.

The text of the proposed rule change is available at the Office of the Secretary, NYSE, and at the Commission.

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

In its filing with the Commission, the self-regulatory organization 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. The self-regulatory organization 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

(a) Purpose

The purpose of this proposed rule change is to eliminate the requirement that the Exchange publish a notice of receipt of a listing application in the Exchange's Weekly Bulletin—and seek comment on that application—prior to authorizing the application. The Exchange will continue to acknowledge receipt of a company's application in either the regular Weekly Bulletin or through some other comparable method of publication. The Exchange also will continue its practice of providing notice of a security's trade date in advance of an original listing. Where practical, the Exchange seeks to provide two days' notice of such trade date.

According to the NYSE, publication of a notice of a listing application, and the solicitation of comments on that application, is no longer necessary. The Exchange began publishing notices of listing applications in its Weekly Bulletin in 1923, prior to the adoption of the Securities Act of 1933 and the Act. At that time, there was little, if any,