SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39289; File No. SR–CBOE–97–52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated Relating to the Addition of Martin Luther King, Jr. Day as an Exchange Holiday

October 31, 1997.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on October 2, 1997, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On October 31, 1997, the Exchange filed with the Commission Amendment No. 1 to the proposed rule change.[2] 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 Exchange seeks to amend Interpretation .03 under Exchange Rule 6.1 to include Martin Luther King, Jr. Day among the Exchange Holidays on which it is closed for business.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange 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 Exchange 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

[2] Amendment No. 1 provided a statutory basis for the proposed rule change. See Letter from Mark A. Koerner, Attorney, Exchange, to Michael L. Loftus, Attorney, Division of Market Regulation, Commission, dated October 27, 1997.

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

1. Purpose

The Exchange proposes to amend Interpretation .03 under Rule 6.1 to include Martin Luther King, Jr. Day among the Exchange holidays on which the Exchange is closed for business. The Exchange will observe the annual holiday on the third Monday in January.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)[3] of the Act, in general, and furthers the objectives of Section 6(b)(5)[4] of the Act, in particular, in that it is designed to perfect the mechanism of a free and open market, and to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

The foregoing rule change is concerned solely with the administration of the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)[5] of the Act and subparagraph (e) of Rule 19b–4[6] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abroagate 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.

IV. Solicitation of Comments

Intersted persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–CBOE–97–52 and should be submitted by December 1, 1997.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(e).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

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[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39294; File No. SR–NASD–95–63]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 5 to Proposed Rule Change Governing Broker-Dealers Operating on the Premises of Financial Institutions

November 4, 1997.

On December 28, 1995, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the original proposed rule change relating to broker-dealers operating on the premises of financial institutions. The NASD subsequently filed Amendment Nos. 1, 2, 3 and 4 to the filing. The Commission published the proposed rule and amendments for comment in the **Federal Register**. The Commission received 11 comment letters in response to the publication of Amendment No. 4 of the proposed rule change. In response to comments on Amendment No. 4, on July 17, 1997, the NASD filed Amendment No. 5 to the

proposed rule change. For the reasons discussed below, the Commission is approving the proposed Amendment No. 5 on an accelerated basis.

I. The Rule

Below is the approved text of the rule change incorporating the amendments submitted by the NASD:

Conduct Rules

2350. Broker-Dealer Conduct on the Premises of Financial Institutions

(a) Applicability

This section shall apply exclusively to those broker-dealer services conducted by members on the premises of a financial institution where retail deposits are taken. This section does not alter or abrogate members' obligations to comply with other applicable NASD rules, regulations, and requirements, nor those of other regulatory authorities that may govern members operating on the premises of financial institutions.

(b) Definitions

(1) For purposes of this section, the term ''financial institution'' shall mean federal and state-chartered banks, savings and loan associations, savings banks, credit unions, and the service corporations of such institutions required by law.

(2) ''Networking arrangement'' and ''brokerage affiliate arrangement'' shall mean a contractual or other arrangement between a member and a financial institution pursuant to which the member conducts broker-dealer services for customers of the financial institution and the general public on the premises of such financial institution where retail deposits are taken.

(3) ''Affiliate'' shall mean a company that controls, is controlled by, or is under common control with, a member as defined in Rule 2720.

(4) ''Broker-Dealer services'' shall mean the investment banking or securities business as defined in paragraph (o) of Article I of the By-Laws.

(c) Standards for Member Conduct

No member shall conduct broker-dealer services on the premises of a financial institution where retail deposits are taken unless the member complies initially and continuously with the following requirements:

(1) Setting

Wherever practical, the member's broker-dealer services shall be conducted in a physical location distinct from the area in which the financial institution's retail deposits are taken. In all situations, members shall identify the members' broker-dealer services in a manner that is clearly distinguished from the financial institution's retail deposit-taking activities. The member's name shall be clearly displayed in the area in which the member conducts its broker-dealer services.

(2) Networking and Brokerage Affiliate Agreements

Networking and brokerage affiliate arrangements between a member and a financial institution must be governed by a written agreement that sets forth the responsibilities of the parties and the compensation arrangements. The member must ensure that the agreement stipulates that supervisory personnel of the member and representatives of the Securities and Exchange Commission and the Association will be permitted access to the financial institution's premises where the member conducts broker-dealer services in order to respect the books and records and other relevant information maintained by the member with respect to its broker-dealer services.

(3) Customer Disclosure and Written Acknowledgment

At or prior to the time that a customer account is opened by a member on the premises of a financial institution where retail deposits are taken, the member shall:

(A) Disclose, orally and in writing, that the securities products purchased or sold in a transaction with the member:

(i) Are not insured by the Federal Deposit Insurance Corporation (''FDIC'');

(ii) Are not deposits or other obligations of the financial institution and are not guaranteed by the financial institution; and

(iii) Are subject to investment risks, including possible loss of the principal invested; and

(B) Make reasonable efforts to obtain from each customer during the account opening process a written acknowledgment of receipt of the disclosures required by paragraph (c)(3)(A).

(4) Communications with the Public

(A) All member confirmations and account statements must indicate clearly that the broker-dealer services are provided by the member.

(B) Advertisement and sales literature that announce the location of a financial institution where broker-dealer services are provided by the member or that are distributed by the member on the premises of a financial institution must disclose that securities products: are not insured by the FDIC; are not deposits or other obligations of the financial institution and are not guaranteed by the financial institution; and are subject to investment risks, including possible loss of the principal invested. The shorter, logo format described in paragraph (c)(4)(C) may be used to provide these disclosures.

(C) The following shorter, logo format disclosures may be used by members in advertisements and sales literature, including material published, or designed for use in radio or television broadcasts, Automated Teller Machine (''ATM'') screens, billboards, signs, posters, and brochures, to comply with the requirements of paragraph (c)(4)(B), provided that such disclosures are displayed in a conspicuous manner:

- Not FDIC Insured
- No Bank Guarantee
- May Lose Value

(D) As long as the omission of the disclosures required by paragraph (c)(4)(B) would not cause the advertisement or sales literature to be misleading in light of the context in which the material is presented, such disclosures are not required with respect to messages contained in:

- Radio broadcasts of 30 seconds or less;
- Electronic signs, including billboard-type signs that are electronic, time, and temperature signs and ticker tape signs, but excluding messages contained in such media as television, on-line computer services, or ATMs' and
- Signs, such as banners and posters, when used only as location indicators.

(5) Notifications of Terminations

The member must promptly notify the financial institution if any associated person of the member who is employed by the financial institution is terminated for cause by the member.

II. Description of the Proposal

A. Procedural History of the Filing

The NASD initially published this bank broker-dealer rule for member comment in an NASD Notice to Members.[1] The NASD substantially revised its proposed rule in response to the 284 comment letters that it received about the proposed rule. The NASD filed the proposed rule with the Commission on December 28, 1995, and subsequently submitted Amendment Nos. 1, 2 and 3 to the filing of January 24, January 29, and March 7, 1996,

[1] NASD Notice to Members 94–94.

respectively.[2] The Commission published the proposed rule and amendments for comment in the **Federal Register** on March 22, 1996,[3] and received 98 comments on the proposed rule amendments. While about one-third of the commenters supported the proposal,[4] most suggested modifications to the proposed rule.[5] More than half of the commenters opposed some or all of the provisions of the proposed rule. In response to these comments, on March 25, 1997, the NASD filed substantial amendments to the proposed rule in the form of Amendment No. 4, and the Commission published notice of the amendments in the **Federal Register** on April 21, 1997.[6] In response to the 11 public comments received on Amendment No. 4, on July 17, 1997, the NASD submitted Amendment No. 5 to the proposal, which contains further amendments to the rule.[7] In addition to approving the proposed rule change, as amended, the Commission is granting accelerated approval to Amendment No. 5.

B. Overview of Amendment No. 4

Amendment No. 4 proposed by the NASD included the following substantial revisions to the proposed rule originally filed with the Commission:

1. Setting

The original proposed rule specified certain requirements regarding the setting of the conduct of a broker-dealer's services, including physical separation, that were designed to reduce customer confusion about the differences between deposit taking and securities activities. The great majority of the commenters that addressed this provision of the original proposal criticized it. They argued that the language in the originally proposed rule did not take into account that there may be certain business settings where the member may be unable to comply with the rule and may, therefore, be prevented from conducting business in such a location. These commenters also indicated that the rule as originally proposed conflicts with the Interagency Statement on Retail Sales of Nondeposit Investment Products (''Interagency Statement'') issued by the banking regulators on February 15, 1994. These commenters requested clarification that this provision would not prohibit a member from conducting a brokerage business in a one-person branch, as long as adequate safeguards are adopted, including adequate disclosure and signs announcing the type of business being conducted.

In response to these comments, the setting provision has been revised to make the rule more consistent with the standards of the Interagency Statement. Amendment No. 4 clarifies that the rule will impose the same standards on broker-dealers as are generally imposed on financial institutions by the Interagency Statement, and require only that broker-dealer services should be provided in a physically distinct location *wherever practical*. Under the Amendment No. 4, broker-dealers will not be prohibited from conducting business in the event that a physical separation is not practical. The location, however, must be identified in a manner that clearly distinguishes the broker-dealer services from the activities of the financial institution, and the member's name must be clearly displayed in the area in which the member conducts its broker-dealer services.

2. Confidential Financial Information and Compensation of Unregistered Persons

The original proposal stated that an NASD member shall not use confidential financial information regarding its customers unless a customer granted to the financial institution prior approval for such use. Most of the commenters who addressed this provision objected to the proposed restriction on the use of confidential financial information, and 7requested that the provision either be deleted or substantially revised.[8] These commenters argued that, to the extent there are special concerns when a bank provides confidential financial information about its customers to a broker-dealer, these concerns are properly the subject of federal and state banking and privacy laws. They further argued that the NASD lacks jurisdiction to regulate a financial institution's use of customer information.

The commenters also argued that a member should be able to use such confidential financial information, provided proper disclosure is made and consent for such use has been obtained in accordance with applicable state law, which, according to commenters, does not require written consent. Alternatively, these commenters argued that a member should be able to rely on a representation by the financial institution that customer consent was obtained. In addition, the commenters stated that complying with this provision represented an unwarranted operational burden not justified by the NASD's stated objective of avoiding customer confusion. Finally, some commenters maintained that their customers expect and welcome this sharing of information to enable the financial institution to present them with an array of investment alternatives.

As with other portions of the originally proposed rule, commenters stated that this provision was unreasonably discriminatory and anti-competitive, noting that restrictions regarding the use of confidential financial information are not applied similarly to broker-dealers who are not operating on the premises of a financial institution. These commenters stated that a more equitable approach would be for the NASD to adopt rules that regulate the use of confidential information by all members—not just those members that operate on the premises of financial institutions.

In response to these concerns, the provision has been deleted, and the NASD Board has issued a Notice to Members soliciting comment on a proposed rule governing the use and release of confidential financial

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[2] See Letters from Elliot R. Curzon, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, Division of Market Regulation, SEC (January 24, 1996 and march 7, 1996), and Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, Division of market Regulation, SEC (January 29, 1996).

[3] Securities Exchange Act Release No. 36980 (March 15, 1996), 61 FR 11913.

[4] See, *e.g.*, Letter from Dr. Janice C. Shields, Coordinator, Consumer Finance Project, center for Study of Responsive Law, to Jonathan Katz, Secretary, SEC (May 15, 1996); Letter from Dee Riddell Harris, President, North American Securities Administrators Association, Inc., to Jonathan Katz, Secretary, SEC (May 21, 1996).

[5] See, *e.g.*, Letter from Maureen Ryan, Senior Counsel, Barnett Banks, Inc., to Jonathan Katz, Secretary, SEC (May 20, 1996); Letter from Sarah Miller, Senior Government Relations Counsel, American Bankers Association to Jonathan Katz, Secretary, SEC (May 21, 1996) (''ABA Letter''); Letter from Steven J. Freiberg, Chairman & CEO, Citicorp Investment Services to Jonathan Katz, Secretary, SEC (May 20, 1996).

[6] Securities Exchange Act Release No. 38506 (April 14, 1997), 62 FR 19378.

[7] See Letter from May Revell, Assistant General Counsel, NASD Regulation, to Belinda Blaine, Associate Director, SEC (July 17, 1997). The changes made in Amendment No. 5 to the proposed rule change are discussed in detail in Section II.C of this approval order, *infra*.

[8] See, *e.g.*, Letter from Sandra L. Caruba, Counsel, First National Bank of Chicago, to Jonathan Katz, Secretary, SEC (May 20, 1996); Letter from David A. Hebner, Vice President and Assistant General Counsel, First Union Corporation, to Jonathan Katz, Secretary, SEC (May 20, 1996); Letter from Steven Alan Bennett, Senior Vice President and General Counsel, Banc One Corporation, to Jonathan Katz, Secretary, SEC (May 21, 1996); Letter from Robert M. Kurucza, General Counsel, Bank Securities Association, to Jonathan Katz, Secretary, SEC (May 21, 1996).

information that would apply to all members.[9]

3. Communications With the Public

The original proposal set forth requirements for all communications with customers, including account statements, advertisements, and sales literature. Several of the commenters who addressed this provision asked whether the disclosures required by the rule could be provided in the abbreviated format allowed by a 1995 interpretation of the Interagency Statement (''1995 Interpretation'').[10] Several commenters also stated that the requirements of the provision are duplicative of the requirements in existing NASD rules.

In response to these comments, this provision has been revised to make the rule more consistent with the Interagency Statement and the 1995 Interpretation. In addition, those provisions of the originally proposed rule that are duplicative of requirements in existing NASD advertising rules have been deleted.[11] Moreover, several new provisions have been added to clarify the circumstances under which abbreviated risk disclosures may be used and when such disclosures are not required.[12]

4. Compensation of Registered/Unregistered Persons

The original rule proposal stated that members may not provide cash or non-cash compensation to financial institutions in connection with referring customers of the financial institution to the member. A related provision required that networking and brokerage affiliate agreements between a member and a financial institution stipulate that the payment of transaction-related cash or non-cash compensation to unregistered financial institution employees for referrals is prohibited. Commenters who addressed these provisions argued that they were unclear and should be revised. Among other things, they suggested that the NASD clarify that its prohibition on payment of referral fees does not prevent bank management from paying referral fees to bank employees.[13]

Commenters also were concerned with NASD statements in the original rule filing that a member may not do indirectly what it is prohibited from doing directly, by compensating employees of a financial institution for referrals through payments that were directed in the first instance to a financial institution. Commenters were particularly concerned that this provision be clarified to ensure that the NASD was not attempting to regulate a financial institution's compensation practices with respect to its own employees—practices that are subject to regulation by the banking agencies. Finally, some commenters stated that this provision was unreasonably discriminatory and anti-competitive because it would prohibit payment of referral fees by bank broker-dealers, and not prohibit such payments by all member firms. In response to these criticisms, these provisions have been deleted, and the NASD has solicited comment on a proposed rule governing compensation of unregistered persons that would apply to all members.[14]

5. Termination for Cause

As originally filed, the proposed rule specified that networking and brokerage affiliate agreements must contain a provision requiring a member to notify a financial institution if a dual employee of the member and the financial institution is terminated for cause by the member. This provision has been deleted from the paragraph of the bank broker-dealer rule pertaining to matters that must be addressed by networking and brokerage affiliate agreements, and is now a separate affirmative requirement.[15]

C. Overview of Amendment No. 5

In response to the comment letters submitted on Amendment No. 4, the NASD submitted Amendment No. 5 [16] to the proposed rule change. The major issues raised by the commenters, and the changes in Amendment No. 5 in response to those comments, are discussed below.

1. Summary of Comments

Some of the commenters to Amendment No. 4 continued to question the need for the rule. Most commenters, however, believed that the NASD had appropriately amended the rule in response to the issues raised by the 98 commenters on the original proposal. These commenters applauded the NASD for revising the original proposal to eliminate the provisions that they considered objectionable and for making the requirements of the rule more consistent with the guidelines in the Interagency Statement. The commenters also suggested several additional revisions that they believed would result in a clearer, less ambiguous rule that would be even more in accord with the standards in the Interagency Statement.

2. Applicability

The rules applies to broker-dealer services conducted by members ''on the premises'' of a financial institution. Two commenters suggested that the scope of the rule be limited to face-to-face communications with customers on bank premises and that the rule not apply where broker-dealer services are provided by means of telecommunication.[17] The rule, however, is not limited in this way because the potential for confusion exists whenever brokerage services are conducted either in person, over the telephone, or through other electronic medium, by a broker-dealer that has a physical presence on the premises of a financial institution. In addition, two commenters suggested that the disclosure requirements of the rule should be applied to all NASD members that offer both insured products and uninsured securities products.[18] The Commission notes that the NASD has issued a Notice to Members soliciting comment on such a rule.[19]

3. Definition of ''Broker-Dealer Services''

Two commenters requested that the definition of ''broker-dealer services'' be clarified to indicate that the rule does not apply to fiduciary activities or to mutual fund distributors and underwriters.[20] The rule has not been revised to reflect these comments. While the rule most often would be applied to broker-dealer services provided to retail customers, the rule would also apply to brokerage services provided to fiduciary accounts, if such services are provided

[9] See NASD Notice to Members 97–12.

[10] Interpretation of the Interagency Statement (September 12, 1995).

[11] For example, pursuant to NASD Rule 2210, any joint account statement must clearly identify and distinguish securities products from non-securities products, and should clearly identify securities products as being offered by the member. See NASD Rule 2210(f)(2)(C).

[12] See Rule 2350(c)(4), *supra.*

[13] See *e.g.,* ABA Letter, *supra* note 5.

[14] See NASD Notice to Members 97–11.

[15] See Rule 2350(c)(5), *supra.*

[16] *Supra* note 7.

[17] See Letter from Barry E. Simmons, Investment Company Institute, to Jonathan Katz, Secretary, SEC (May 12, 1997) (''1997 ICI Letter''); and Letter from Jack Kopnisky, President & CEO, KeyInvestments, to Jonathan Katz, Secretary, SEC (May 9, 1997) (''1997 KeyInvestments Letter'').

[18] See Letter from Kimberly Crichton, General Counsel and Vice President, Citicorp Investment Services, to Jonathan Katz, Secretary, SEC (May 12, 1997); and Letter from Valorie Seyfert, President, CUSO Financial Services, L.P., to Jonathan Katz, Secretary, SEC (May 21, 1997) (''1997 CUSO Letter'').

[19] See NASD Notice to Members 97–26.

[20] See Letter from Robert R. Davis, Director, Government Relations, America's Community Bakers, to Jonathan Katz, Secretary, SEC (May 13, 1997) (''1997 ACB Letter''); and 1997 ICI Letter, *supra* note 17.

on the premises of a financial institution where retail deposits are taken. Furthermore, the Interagency Statement does not exclude fiduciary activities from the scope of the guidelines; it merely states that the guidelines ''*generally do not apply* to the sale of nondeposit investment products to non-retail customers, such as sales to fiduciary accounts administered by an institution'' (emphasis added). The 1995 Interpretation also clarifies that issue. It states: ''[F]or fiduciary accounts where the customer directs investments, * * * the disclosures prescribed by the Interagency Statement should be provided.''

In addition, the NASD rule would apply by its terms to mutual fund distributors and underwriters if they are engaged in brokerage activities on the premises of a financial institution. For these reasons, the rule has not been revised to respond to this comment.

4. Setting

As discussed above, the revised rule requires that, wherever practical, broker-dealer services must be conducted in a physical location distinct from the area where retail deposits are taken. One commenter suggested amending the rule to require that broker-dealer services be separated from the area of the financial institution where retail deposits are *routinely* taken to make clear that brokerage services must be offered away from the teller line.[21] Because of concern that this proposal could lead to confusion, the rule has not been changed in response to this comment. However, the NASD intends to clarify in a Notice to Members announcing the approval of the rule that brokerage services should be separated from the teller line, the area of the bank where retail deposits are routinely taken. The NASD also intends to clarify that the rule is not meant to preclude certificates of deposit from being offered in the brokerage area if that particular product, rather than an uninsured investment product, is best suited to the customer's investment needs. The rule therefore would not preclude a bank customer from purchasing an array of investment products, including certificates of deposit, so long as the brokerage area is appropriately separated from the other areas of the financial institution with appropriate signs indicating the type of business being conducted and other lines of demarcation, and the customer is given the appropriate disclosures.

5. Customer Disclosure and Written Acknowledgment

The rule requires NASD members to make certain disclosures at or prior to the time that a customer account is opened by the member.[22] One provision requires disclosure that securities products are not insured. Three commenters addressed this requirement in response to Amendment No. 4. Two suggested deleting the phrase ''or other deposit insurance'' to ensure consistency with the Interagency Statement.[23] The third suggested simply stating that securities products are not federally insured.[24] In response to these comments, the phrase ''or other deposit insurance'' has been deleted from the rule.

Another commenter suggested that, in addition to the disclosures required by the current version of the rule, disclosure should be made that products sold by a dual employee are offered by a person who accepts deposits and sells nondeposit investment products.[25] In order to keep the NASD rule consistent with the Interagency Statement, and because the current disclosures are designed to adequately apprise investors of the risks of securities products, this change has not been made.

6. Communications With the Public

Paragraph (c)(4)(B) permits shorter, logo format disclosures in visual media. One commenter suggested that the rule should also allow these abbreviated disclosures in radio advertisements.[26] Because the definition of ''advertisement'' in NASD Rule 2210 (Communications with the Public), includes material designed for use in radio, the rule language has been revised to be consistent with Rule 2210.

The rule also allows the required disclosures to be omitted in specified advertisements and sales literature, provided the omission will not cause the advertisement or sales literature to be misleading. One commenter suggested deleting any reference to the ''misleading'' nature of such omissions.[27] This language has been retained to appropriately reflect the general prohibitions on misleading advertising in NASD rules.[28] Another commenter requested that the rule allow omission of the required disclosures in letters that introduce the broker-dealer to bank customers and do not contain an offer or a solicitation.[29] This suggested change has not been made. Generally, a personalized letter to an individual customer is not included in either the definition of advertisements or sales literature in NASD Rule 2210. The letter would be considered ''correspondence'' subject to the requirements of NASD Rule 3010 (Supervision).[30]

Paragraphs (c)(4)(B), (C), and (D) have been revised to make other clarifying changes, many of which merely make the rule language in Paragraph (c)(4) more consistent with language in NASD Rule 2210. For example, the phrase ''promotional and sales material'' has been replaced with the phrase ''sales literature'' in Paragraph (c)(4)(A), consistent with Rule 2210. Also, Paragraph (c)(4)(C) has been revised to clarify that logo disclosures may be used in all advertisements and sales literature. Finally, in order to ensure consistency with the standards in the Interagency Statement, Paragraph (c)(4)(D) has been revised to add language to the rule that mirrors language in the 1995 Interpretation. These minor revisions clarify the meaning of the rule and make the rule consistent with the Interagency Statement.

7. Notification of Termination

The rule requires members to promptly notify the financial institution if an associated person of the member who also is employed by the financial institution (a dual employee) is terminated for cause by the member. Two commenters suggested that such notification should also be provided in situations where an associated person who is employed only by the member and not directly by the financial institution is terminated.[31] This change has not been made because the purpose

[21] See Letter from Sarah A. Miller, Senior Government Relations Counsel, American Bankers Association, to Jonathan Katz, Secretary, SEC (May 12, 1997) (''1997 ABA Letter'').

[22] The Commission notes that requiring disclosure at or prior to the time of the opening of an account is consistent with other SEC rules. See *e.g.*, Exchange Act Rule 11Ac1–3, 17 CFR 240.11Ac1–3 (regarding payment for order flow).

[23] See 1997 ABA Letter, *supra* note 21, and 1997 ICI Letter, *supra* note 17.

[24] See 1997 CUSO Letter, *supra* note 18.

[25] Id.

[26] See Letter from Kimberly Crichton, General Counsel and Vice President, Citicorp Investment Services, to Jonathan Katz, Secretary, SEC (May 12, 1997).

[27] See 1997 Key Investments Letter, *supra* note 17.

[28] See NASD Rule 2210.

[29] See Letter from Bill Sones, President, Independent Bankers Association of America, to Jonathan Katz, Secretary, SEC (May 12, 1997).

[30] But see NASD Notice to Members 97–37 (requesting comment on proposed definition of correspondence for rules regarding communications with the public).

[31] See 1997 ACB Letter, *supra* note 20. See also Letter from Nicholas J. Ketcha, Jr., Director, Division of Supervision, FDIC, to Belinda Blaine, Associate Director, Division of Market Regulation, SEC, (August 29, 1997).

of the provision is to permit banks and broker-dealers to maintain open communications about dual employees, and it is unclear what purpose would be served by the revision.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 5. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 the NASD. All submissions should refer to file number SR–NASD–95–63 and should be submitted by December 1, 1997.

IV. Commission Findings

The Commission finds that the rule change is consistent with the requirements of Section 15A(b)(6) of the Act.[32] Section 15A(b)(6) specifies that the rules of a national securities association be designed, among other things, to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the rule will provide enforceable standards designed to reduce potential customer confusion in dealing with broker-dealers that conduct business on the premises of financial institutions. The rule also should clarify the relationship between a broker-dealer and a financial institution entering into a networking arrangement.[33] The rule should help prevent confusion by clarifying that securities purchased by customers on the premises of a financial institution are not insured by the FDIC or the financial institution. The disclosures required by the rule, and the written acknowledgement of disclosures obtained pursuant to the rule, are intended to assist investors in making investment decisions based on a better understanding of the distinctions between insured deposits and uninsured securities products. Although the rule requires only that members ''make reasonable efforts'' to obtain written customer acknowledgment of the required disclosures in the account opening process, the Commission expects members to obtain such written acknowledgement in all but rare circumstances (*e.g.* when a customer refuses to sign the acknowledgment). It is anticipated that, as is the case today, many firms will provide these disclosures in the new account opening form which, when signed by the customer, constitutes written acknowledgment. The Commission believes that in the rare circumstances where acknowledgment is not obtained, heightened supervisory procedures would be necessary. Reasonable supervisory procedures would include procedures for the registered representative receiving approval from the member's compliance department prior to opening the account, and documenting that the customer has refused to sign the written acknowledgment of such disclosure.

The Commission also agrees with the NASD that the activities of NASD member firms operating on the premises of financial institutions and related customer protection issues are not adequately addressed by existing NASD rules. Because the Interagency Statement is not part of the securities laws or rules, the basis for NASD Regulation disciplinary action against member firms that do not comply with the Interagency Statement is unclear. The proposed rule establishes a clear standard of conduct governing the practices of member firms operating on the premises of financial institutions that is enforceable by the NASD.

The Commission finds good cause for approving Amendment No. 5 prior to the thirtieth day after the date of the publication of notice of filing thereof in the **Federal Register**, because Amendment No. 5 reflects and responds to earlier comments about the proposal and further clarifies the proposal. In addition, accelerated approval of Amendment No. 5 will permit the rule to go into effect without further delay.

V. Effective Date

The NASD will announce the approval of this rule in a Notice to Members no later than 60 days after publication of this Order in the **Federal Register**. The effective date of this rule will be 60 days after publication of the NASD's Notice to Members.

It is therefore ordered, pursuant to Section 19(b)(2)[34] of the Act, that the proposed rule change (SR–NASD–95–63), as amended be, and hereby is, approved.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–29600 Filed 11–7–97; 8:45 am]

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[32] 15 U.S.C. 78*o*–3(b)(6).

[33] In approving the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[34] 15 U.S.C. 78s(b)(2).

DEPARTMENT OF STATE

[Public Notice No. 2625]

Secretary of State's Advisory Committee on Private International Law; Meeting Notice

There will be a meeting on Developments in Private International Law of the Secretary of State's Advisory Committee on Private International Law (ACPIL) on Thursday, November 20 from 1:00 p.m. to 5:00 p.m. and Friday, November 21 from 10:00 a.m. to 4:30 p.m. at the Department of State in Washington, D.C.

Comments and advice will be solicited on developments in private international law. The meeting agenda will include a review of the work of international organizations specializing in this field, including the International Institute for Unification of Private Law (UNIDROIT), the Hague Conference on Private International Law, the United Nations Commission on International Trade Law (UNCITRAL), Inter-American Specialized Conferences on Private International Law (CIDIP) sponsored by the Organization of American States (OAS), and other international organizations, as appropriate.

Topics for discussion will include the proposed Hague convention on jurisdiction, recognition and enforcement of foreign judgments; the 1997 UNCITRAL model law on cross-border insolvencies; electronic commerce developments, including jurisdiction, cross-border recognition, and U.S. positions on electronic signatures; whether the Advisory Committee should endorse for U.S. signature and ratification the 1996 Hague Convention on Protection of Children; possible PIL topics at the next O.A.S. Specialized Conference on Private International Law (CIDIP–VI); the proper role non-governmental parties should play in international bodies such as the U.N.; the Hague Conventions on intercountry adoption and international child abduction; the prospects for a Hague convention on