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

The proposed change to Rules 9269 and 9360 would establish that in cases involving bars or expulsions, service of decisions should be done by overnight courier, facsimile or other means likely to obtain prompt service. Rule 9269 does not presently contain language addressing the means by which service of default decisions in cases involving bars and expulsions should be accomplished. Rule 9360 currently requires that the Chief Hearing Officer serve all final disciplinary decisions, and that reasonable efforts be made to personally serve (hand delivery) all final decisions imposing a bar or expulsion. Rule 9360's personal service provision for final decisions imposing bars or expulsions was created because these decisions become effective immediately.

The Association believes that with respect to final default decisions imposing bars or expulsions, reasonable efforts at personal service (hand delivery) generally would not be successful. Default decisions are often entered because respondents cannot be located. If and when such respondents become aware that a default has been entered against them, Rule 9269(c) provides an expeditious means for such respondents to move to set aside the default decision.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules 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. The NASD believes that the proposed rule change is consistent with Section 15A(b)(7) in that it provides for reasonable means to notify parties of default decisions. The rule change is consistent with Section 15A(b)(8) in that it furthers the statutory goals of providing a fair procedure for disciplining members and persons associated with members.

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

NASD Regulation 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

Within thirty-five 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 ninety 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 self-regulatory organization 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 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 the file number SR–NASD–97–58 and should be submitted by September 24, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–23762 Filed 9–2–98; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40372; File No. SR–NASD–98–52]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Supervision of Correspondence

August 27, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 24, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, NASD Regulation, Inc. (''NASDR''), 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 NASDR. The NASDR has designated the portion of the proposal relating to the extension of the effective date as one constituting a stated policy, practice, or interpretation with respect to the meaning of an existing rule under Section 19(b)(3)(A)(i) of the Act,[3] which renders the rule effective upon the Commission's receipt of this filing. On August 26, 1998, the NASDR submitted Amendment No. 1 to the proposed rule change.[4] 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 NASDR is proposing to amend NASD Rule 3010 to state that firms must[5] review incoming, non-electronic correspondence to identify customer complaints and funds. Below is the text of the proposed rule change. Proposed

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

[2] 17 CFR 240.19b–4.

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

[4] *See* Letter from Mary N. Revell, Associate General Counsel, NASDR, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated August 24, 1998 (''Amendment No. 1''). In Amendment No. 1, NASDR proposes to replace the word ''should'' in the text of the proposed rule with the word ''must'' to clarify that NASD member firms are required to develop written procedures for the review of incoming, non-electronic correspondence directed to registered representatives for purposes of identifying and handling customer complaints and funds.

[5] *See* Amendment No. 1, *supra* note 4.

new language is italicized, proposed deletions are in brackets.

CONDUCT RULES

Rule 3010. Supervision

(a) through (c) No change

(d) Review of Transactions and Correspondence

(1) No Change

(2) Review of correspondence. Each member shall develop written procedures that are appropriate to its business, size, structure, and customers for the review of incoming and outgoing written and electronic correspondence with the public relating to its investment banking or securities business. *The procedures must include review of incoming, non-electronic correspondence directed to registered representatives for purposes of properly identifying and handling customer complaints and funds.* Where such procedures for the review of correspondence do not require [pre-use] review of all correspondence *prior to use or distribution,* they must include provision for the education and training of associated persons as to the firm's procedures governing correspondence; documentation of such education and training; and surveillance and follow-up to ensure that such procedures are implemented and adhered to.

(3) No change

(e) through (g) 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, the NASDR 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 NASDR 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

In December 1997, the SEC approved rule amendments and a Notice to Members that were designed to allow firms to develop flexible supervisory procedures for the review of correspondence with the public.[6] The amendments were intended to recognize the growing use of electronic communications such as ''e-mail'' while still providing for effective supervision. Notice to Members 98–11, issued in January 1998, announced approval of the rule amendments, the effective date of the new rules, and provided guidance to firms on how to implement these rules. Subsequent to SEC approval of the amendments, but before the amended rules went into effect, the SEC received 14 comment letters objecting to certain provisions in the new rules, primarily from members in the insurance industry.[7] The commenters primarily objected to a provision in Notice to Members 98–11, which states that firms will be required to review all incoming correspondence received in non-electronic format directed to registered representatives and related to a member's investment banking or securities business. The NASDR added this provision to Notice to Members 98–11 to address two regulatory concerns raised by the SEC: (1) Ensuring that firms capture all customer complaints; and (2) preventing registered representatives from taking cash or checks out of customer letters.

The commenters stated that it will be very difficult or impossible for a registered principal to conduct a pre-distribution review of all incoming, non-electronic correspondence, particularly correspondence received by registered representatives in small, one- or two-person offices. In response to these concerns, the effective date of the requirement to review all incoming, non-electronic correspondence was delayed to allow the NASDR and member firms time to develop and implement alternative, workable procedures for the review of incoming, non-electronic correspondence that addresses the regulatory concerns about preventing misappropriation of customer funds and diversion of customer complaints.[8] The rule amendments and all other provisions in the Notice became effective on April 7, 1998.[9]

NASD Rule 3010(d)(2) currently requires each member to develop written policies and procedures for review of correspondence with the public relating to its investment banking or securities business tailored to its structure and the nature and size of its business and customers. The NASDR proposes to amend the rule to state that these procedures must include review of incoming, non-electronic correspondence directed to registered representatives for purposes of properly identifying and handling customer complaints and funds. This proposed amendment will clarify that firms must develop supervisory procedures that specifically address the regulatory concerns identified by the SEC.

The Notice to Members will provide guidance on how to implement the proposed rule change. In particular, the Notice states that, in conducting reviews of incoming non-electronic correspondence to identify customer complaints and funds, where the office structure permits review of all correspondence, members should designate a registered or associated person to open and review correspondence. The designated person must not be supervised or under the control of the registered person whose correspondence is opened and reviewed. Unregistered persons who have received sufficient training to enable them to identify complaints and checks would be permitted to review correspondence. These guidelines are designed to correspond to procedures currently followed by many large, multi-service firms.

Where the office structure does not permit this arrangement, the Notice states that the firm would have to employ alternative procedures reasonably designed to assure adequate handling of complaints and checks. Procedures that could be adopted include the following:

- Forwarding incoming correspondence related to the firm's investment banking or securities

[6] See Securities Exchange Act Release No. 39510 (December 31, 1997) 63 FR 1131 (January 8, 1998).

[7] *See* Letters from Carl B. Wilkerson, American Council of Life Insurance, to Jonathan G. Katz, Secretary, SEC, dated January 9, 1998 and January 29, 1998; Beverly A. Byrne, BenefitsCorp Equities, Inc., to Jonathan G. Katz, Secretary, SEC, dated January 26, 1998; Michael S. Martin, The Equitable Life Assurance Society of the United States, to Jonathan G. Katz, SEC, dated January 29, 1998; Janet G. McCallen, International Association for Financial Planning, to Jonathan G. Katz, Secretary, SEC, dated February 13, 1998; W. Thomas Boulter, Jefferson Pilot Financial, to Jonathan G. Katz, Secretary, SEC, dated January 28, 1998; Leonard M. Bakal, Metropolitan Life Insurance Company and MetLife Securities, Inc., to Jonathan G. Katz, Secretary, SEC, dated January 28, 1998; Michael L. Kerley, MML Investors Services, Inc. to Secretary, SEC, dated January 26, 1998; Mark D. Johnson, The National Association of Life Underwriters, to Jonathan G. Katz, Secretary, SEC, dated February 5, 1998; Theodore Mathas, NYLIFE Securities, to Jonathan G. Katz, Secretary, SEC, dated January 16, 1998 and January 29, 1998; Beverly A. Byrne, One Orchard Equities, Inc., to Jonathan G. Katz, Secretary, SEC, dated January 26, 1998; Dodie Kent, Pruco Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated January 29, 1998; and James T. Bruce, Wiley, Rein & Fielding, on behalf of the Electronic Messaging Association, to Jonathan G. Katz, SEC, dated January 30, 1998.

[8] *See* Securities Exchange Act Release Nos. 39665 (February 13, 1998) 63 FR 9032 (February 23, 1998); 39866 (April 14, 1998) 63 FR 19778 (April 21, 1998); and 40178 (July 7, 1998) 63 FR 37911 (July 14, 1998).

[9] *See* Securities Exchange Act Release No. 39866, *supra* note 8.

business to an Office of Supervisory Jurisdiction (OSJ) or a branch manager for review on a weekly basis;

- Maintenance of a separate log for all checks received and products sold, which is forwarded to the supervising branch on a weekly basis;
- Communication to clients that informs them that questions and complaints can be sent directly to the compliance department and provides them with the compliance department's address and phone number; and
- Branch examination verification that the procedures are being followed.

The Notice also states that, regardless of the method used for initial review of incoming, non-electronic correspondence, as with other types of correspondence, Rule 3010(d)(1) would still require review by a registered principal of some of each registered representative's correspondence with the public relating to the member's investment banking or securities business.

Notice to Members 98–11 stated that firms would be required to review all incoming correspondence received in non-electronic format directed to registered representatives and related to a member's investment banking or securities business. The NASDR proposes to replace this requirement with the rule amendment and guidance contained in this proposed rule change. The Notice that will be issued when this proposed rule is approved will state that the requirement set forth in Notice to Members 98–11 is no longer applicable and has been superseded by the amendment to Rule 3010(d)(2) and the guidance provided in the Notice.

As discussed above, the effective date of the provision in Notice to Members 98–11 stating that members must review ''all incoming correspondence received in non-electronic format directed to registered representatives and related to a member's investment banking or securities business'' has been delayed to allow the NASDR and member firms time to develop and implement alternative, workable procedures for the review of such correspondence. The delay in the effective date of this provision is scheduled to expire on September 30, 1998.[10] To ensure continuity of the regulatory requirements applicable to member firms, the NASDR proposes an extension of the effective date of this provision until this proposed rule change has been approved and has been made effective.

2. Statutory Basis

The NASDR believes the proposed rule change is consistent with Section 15A(b)(6) of the Act,[11] which requires, among other things, that the Association'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. The NASD believes that reviewing incoming, non-electronic correspondence to identify customer complaints and funds is consistent with this requirement.

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

The NASDR does not believe that the proposed rule change will impose a 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

With respect to the proposal to extend the effective date of the provision in Notice to Members 98–11 regarding the review of incoming, non-electronic correspondence: The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration or enforcement of an existing rule of the Association and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and subparagraph (e) of Rule 19b–4 thereunder.[13]

At any time within 60 days of the filing of this portion of the rule change, the Commission may summarily abrogate 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.

With respect to the substantive provisions of the proposed rule change: Within 35 days of the date of the 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 self-regulatory organization 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 is approved.

IV. Solicitation of Comments

Interested person 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. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 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, 450 Fifth Street, NW, Washington DC. Copies of such filing also will be available for inspection and copying at the NASD. All submissions should refer to File No. SR–NASD–98–52 and should be submitted by September 24, 1998.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 98–23767 Filed 9–2–98; 8:45 am]

BILLING CODE 8010–01–M

[10] *See* Securities Exchange Act Release No. 41078, *supra* note 8.

[11] 15 U.S.C. 78o–3(b)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 19b–4(e).

[14] 17 CFR 200.30–3(a)(12).