

NASD has also proposed to change the Rule to provide that exemptions will only be granted in "exceptional circumstances." This change, coupled with those described above, should help to reduce the number of requests that might otherwise consume time and resources on the part of both NASD and firms subject to the Rule. Furthermore, NASD's proposal to extend the duration of the taping requirement from two years to three years from the date taping begins is proper. Although one commenter noted that this constitutes a higher compliance burden, it should reduce any confusion that might be caused by the difference between the Rule's current two-year taping requirement and the Rule's requirement that member firms must review the last three years of their employees' work history to determine whether they had worked at disciplined firms. The Commission also believes that the proposal to allow 60 days, instead of 30, for the installation of taping systems is appropriate. One commenter noted that it could take 60 days to implement a taping system.

The proposed clarifying changes to the Rule are also consistent with the Act. The substitution of "associated with one or more Disciplined Firms in a registered capacity" for "employed by one or more Disciplined Firms" in subparagraph (b)(2)(viii) of the Rule should eliminate any misconception that representatives that were independent contractors¹³ of disciplined firms do not count toward the threshold levels. Likewise, adding language to clarify that firms that become subject to the Rule must "implement" the required procedures within the allotted time period should make clear that the taping and supervisory procedures must be put into use within the prescribed time period. Finally, NASD's proposal to clarify that the taping compliance period begins on the date that the member implements its taping system should help to ensure that the Rule's requirements are easily understood.

As noted above, NASD has also proposed to permit, upon request, public disclosure of whether a particular firm is subject to the Taping Rule. This disclosure would be made available through the toll-free telephone listing of NASD's Public Disclosure Program. Although one of the commenters asserted that the public

might interpret the Rule's application as a disciplinary sanction, rather than a remedial measure, this does not mean that the disclosure should not be permitted. Rather, the Commission believes that this disclosure will benefit investors and the general public by providing information that will permit them to consider the level of experience and training of a firm's representatives. Therefore, this should allow investors a better opportunity to evaluate their choices in selecting a broker/dealer.

Finally, the Commission believes that NASD's proposal to apply the changes prospectively is appropriate. Retroactive application would allow firms currently subject to the Rule to evade the requirements entirely, and thereby inappropriately restrict NASD's oversight of such firms' sales training and practices.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-NASD-2002-04) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,

Deputy Secretary.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending August 23, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST-2002-13190.

Date Filed: August 20, 2002.

Parties: Members of the International Air Transport Association.

Subject: CTC COMP 0411 dated 2 August 2002. Worldwide Area Resolutions (changes to rates) except to/from USA/US Territories, CTC COMP 0417 dated 20 August 2002, technical correction Summary attached.

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).

Minutes—CTC COMP 0400 dated 25 June 2002. Tables—CTC1 Rates 0017, CTC2 EUR Rates 0018, CTC2 ME-AFR Rates 0029, CTC3 Rates 0020, CTC12 NATL-TC2 Rates 0068, CTC12 MATL-TC2 Rates 0034, CTC12 SATL-TC2 Rates 0033, CTC23 AFR-TC3 Rates 0020, CTC23 EUR-TC3 Rates 0021, CTC23 ME-TC3 Rates 0032, CTC31 N/C Rates 0014, CTC31 S Rates 0013, CTC123 Rates 0015. Intended effective date: 1 October 2002.

Docket Number: OST-2002-13192.

Date Filed: August 20, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC1 0226 dated 16 August 2002, Mail Vote 2226, TC1 Within South America, Expedited Special Amending Resolution 010y r1-r7, Intended effective date: 15 September 2002.

Docket Number: OST-2002-13193.

Date Filed: August 20, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC1 0227 dated 16 August 2002, Mail Vote 227, TC1 Longhaul (except between USA and Chile), Expedited Special Amending Resolution 010z r1-r4, Intended effective date: 15 September 2002.

Docket Number: OST-2002-13205.

Date Filed: August 21, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC2 EUR-ME 0144 dated 19 July 2002, TC2 Europe-Middle East Resolutions r1-r25. Minutes—PTC2 EUR-ME 0146 dated 20 August 2000. Tables—PTC2 EUR-ME Fares 0063 dated 26 July 2002, PTC2 EUR-ME Fares 0065 dated 26 July 2002, Technical Correction to PTC2 EUR-ME Fares 0063, PTC2 EUR-ME Fares 0067 dated 2 August 2002, Technical Correction to PTC EUR-ME Fares 0063, Intended effective date: 1 January 2003.

Andrea M. Jenkins,

Federal Register Liaison.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending August 23, 2002

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier

¹³ The Commission notes that the issue of independent contractors was addressed in a letter from the Division of Market Regulation to NASD. See letter from Douglas Scarff, Director, Division of Market Regulation, Commission, to Gordon Macklin, President, NASD (June 18, 1982).