

contact, and that members and associated persons follow procedures to refrain from contacting such persons. Accordingly, the Commission believes it is appropriate to grant members who have established the appropriate routine business practices a safe harbor exemption from liability for calls made out of genuine error.

E. Miscellaneous

The Commission believes that the NASD's proposal to apply the telemarketing and telephone solicitation restrictions to wireless telephone numbers is appropriate, given that consumers can register wireless telephone numbers in the national do-not-call registry. Further, the Commission believes that a member should not be able to avoid accountability for complying with telemarketing restrictions and regulations by employing another entity to perform telemarketing services on behalf of the member. Accordingly, the Commission finds proposed NASD Rule 2212(f), relating to outsourcing telemarketing, to be appropriate.

F. Accelerated Approval of Amendment No. 1

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act, for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. As discussed above, in Amendment No. 1, the NASD expanded the breadth of the established business relationship exception. The Commission believes that the proposed Amendment No. 1 will, among other things, facilitate members' ability to uphold their agency obligations by enabling them to make a telemarketing call under certain circumstances to customers who have not actively traded or made deposits to their brokerage accounts. In making the determination to accelerate approval of Amendment No. 1, the Commission notes that all five commenters supported a broader definition of "established business relationship."⁴⁹

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 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

20549-0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-NASD-2003-131. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2003-131 and should be submitted by February 10, 2004.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁵⁰ that the proposed rule change, as amended (File No. SR-NASD-2003-131) is approved, and Amendment No. 1 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49059; File No. SR-NASD-2003-200]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Amendment to NASD Rule 2130

January 12, 2004.

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 December

30, 2003, the National Association of Securities Dealers, Inc. ("NASD") 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 NASD. NASD has designated the proposed rule change as "non-controversial" under Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. 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

NASD is proposing to amend NASD Rule 2130 to correct a typographical error in Rule 2130(c). The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

2130. Obtaining an Order of Expungement of Customer Dispute Information From the Central Registration Depository (CRD System)

(a) and (b) No change.

(c) For purposes of this rule, the terms "sales practice violation," "investment-related," and "involved" shall have the meanings set forth in the Uniform Application for Securities Industry Registration [of] or Transfer ("Form U4") in effect at the time of issuance of the subject expungement order.

* * * * *

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

In its filing with the Commission, NASD 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. NASD 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

The proposed rule change would correct a typographical error in NASD

⁴⁹ See ACLI Letter, at 3-4; Schwab Letter, at 4; CUNA Letter, at 2; FSR Letter, at 2-3; SIA Letter, at 4.

⁵⁰ *Id.*

⁵¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

Rule 2130(c) to change "Uniform Application for Securities Industry Registration of Transfer" to "Uniform Application for Securities Industry Registration or Transfer."⁵

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act⁶ which requires, among other things, that NASD'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. NASD believes that correcting the typographical error in NASD Rule 2130(c) to change "Uniform Application for Securities Industry Registration of Transfer" to the correct title "Uniform Application for Securities Industry Registration or Transfer" is consistent with the protection of investors and the public interest.

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

NASD does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6) thereunder.⁸ At any time within 60 days of the filing of the proposed 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.

NASD has requested that the Commission waive the usual five-business-day notice period and the usual 30-day pre-operative period. The Commission notes that the proposal merely corrects a typographical error in NASD Rule 2130(c) and raises no new regulatory issues. As a result, the Commission believes that it is consistent with the protection of investors and the public interest to waive the five-business-day notice period and accelerate the operative date so that the typographical error can be corrected without delay. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.⁹

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 20549-0609. Comments may also be submitted electronically at the following e-mail address: rulecomments@sec.gov. All comment letters should refer to File No. SR-NASD-2003-200. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 No. SR-NASD-2003-200 and should be submitted by February 10, 2004.

⁹ For purposes only of accelerating the operative date of the proposed rule change the Commission considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 04-1083 Filed 1-16-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49054; File No. SR-NFA-2003-04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Futures Association Regarding Proficiency Requirements for Security Futures Products

January 12, 2004.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-7 under the Act,² notice is hereby given that on December 15, 2003, the National Futures Association ("NFA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes described in items I, II, and III below, which items have been prepared by the NFA. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

NFA, on December 12, 2003, submitted the proposed rule change to the Commodity Futures Trading Commission ("CFTC") for approval and invoked the "ten-day" provision of section 21(j) of the Commodity Exchange Act ("CEA")³. On December 18, 2003, the CFTC determined not to review the proposed rule change and permitted NFA to make the proposed rule change effective on December 24, 2003.⁴

I. Self-Regulatory Organization's Description of the Proposed Rule Change

NFA's proficiency requirements for persons engaged in security futures activities allow current registrants to qualify to engage in these activities by taking an appropriate training program rather than a test. NFA anticipated updating the Series 3 examination⁵ and

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(7).

² 17 CFR 240.19b-7.

³ 7 U.S.C. 21(j).

⁴ See Letter from Lawrence B. Patent, Deputy Director, Compliance and Registration Section, Division of Clearing and Intermediary Oversight, CFTC to Thomas W. Sexton, III, Esq., General Counsel, NFA, dated December 18, 2003.

⁵ The Series 3 is a comprehensive examination that qualifies registered associated persons to

⁵ See Securities Exchange Act Release No. 48933 (December 16, 2003), 68 FR 74667 (December 24, 2003) (SR-NASD-2002-168).

⁶ 15 U.S.C. 78o-3(b)(6).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).