

Act,<sup>26</sup> which provides, among other things, that NASD rules must be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.<sup>27</sup> The Commission believes that NASD has adequately responded to concerns about the proposed rule change raised by commenters, and that the proposed rule change is consistent with the provision of the Exchange Act noted above. In particular, proposed NASD Rule 2342 should help to improve investors' awareness of SIPC's policies and practices, and the scope of coverage available under SIPA.

Pursuant to Section 19(b)(2) of the Act,<sup>28</sup> the Commission finds good cause for approving the proposed rule change before the thirtieth day after the date of publication of notice of filing thereof. Accelerating approval and delaying the effective date of the proposed rule change will give NASD additional time to notify its members about the requirements of the proposed rule and help to ensure that firms have sufficient time to efficiently make the changes to their customer documentation and systems needed to comply with the rule.

## V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2006-124 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2006-124. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR-NASD-2006-124 and should be submitted on or before June 6, 2007.

## VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>29</sup> that the proposed rule change (SR-NASD-2006-124), as modified by Amendment Nos. 1 and 2, be, and it here is, approved on an accelerated basis, and shall be effective 180 days following the date of this order.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>30</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-9433 Filed 5-15-07; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55732; File No. SR-NFA-2007-02]

### Self-Regulatory Organization; National Futures Association; Notice of Filing and Immediate Effectiveness of a Proposed Interpretive Notice to Compliance Rule 2-4 Regarding Disclosure Guidelines for FCMs Offering Sweep Accounts

May 9, 2007.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-7 under the Act,<sup>2</sup> notice is hereby given that on February 27, 2007, National Futures Association ("NFA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which Items have been substantially prepared by NFA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. NFA, on February 26, 2007, submitted the proposed rule change to the Commodity Futures Trading Commission ("CFTC") for approval. The CFTC approved the proposed rule change on March 12, 2007.

#### I. Self-Regulatory Organization's Description of the Proposed Rules

Section 15A(k) of the Act<sup>3</sup> makes NFA a national securities association for the limited purpose of regulating the activities of NFA members ("Members") who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Exchange Act.<sup>4</sup> The new Interpretive Notice to NFA Compliance Rule 2-4 entitled "Disclosure Guidelines for FCMs Offering Sweep Accounts" ("Interpretive Notice") will apply to all futures commission merchant ("FCM") Members, including those who are registered as security futures brokers or dealers under Section 15(b)(11). The Interpretive Notice applies certain disclosure guidelines to FCM-offered sweep account programs that manage cash balances.

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

NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on

<sup>26</sup> 15 U.S.C. 78o-3(b)(6).

<sup>27</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>28</sup> 15 U.S.C. 78s(b)(2).

<sup>29</sup> 15 U.S.C. 78s(b)(2).

<sup>30</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(7).

<sup>2</sup> 17 CFR 240.19b-7.

<sup>3</sup> 15 U.S.C. 78o-3(k).

<sup>4</sup> 15 U.S.C. 78o(b)(11).

competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

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

1. Purpose

As noted above, the Interpretive Notice applies certain disclosure guidelines to FCM-offered sweep account programs that manage cash balances. Specifically, these sweep account programs transfer a customer's excess funds from a regulated commodity account (whether a customer segregated or secured account) to a non-regulated account for the customer at the FCM, an affiliate of the FCM, or another entity so that the customer can obtain a higher investment return than maintaining the funds in the FCM's customer regulated commodity accounts.

The Interpretive Notice makes clear that the disclosure guidelines apply only to sweep account programs offered or regularly recommended by an FCM. If a customer elects on its own to transfer funds to a particular sweep account program that is not offered by the FCM, then the FCM does not have any disclosure obligations pursuant to the Interpretive Notice. Additionally, the disclosure guidelines are inapplicable to transfers made pursuant to an FCM's customer agreement's provisions whereby a customer authorizes the transfer of funds from a regulated commodity account to any other account maintained by the customer at the FCM or one of its affiliates when necessary to avoid a margin call or to reduce the debit balance in the other account, or to satisfy any other obligation to the FCM or its affiliates.

Initially, FCMs should identify the entity maintaining the sweep account and whether that entity is subject to regulation and should disclose any material terms and conditions, risks and features of their offered programs. In addition, FCMs should advise customers of any conflicts of interest in connection with the offered programs, including whether the FCM receives compensation or other benefits for customer balances maintained in the sweep account, and the FCM should advise the customer which entity to contact to gain access to any swept funds. An FCM should make these disclosures at the time a sweep program is offered to a customer and, of course,

these disclosures should be updated for participants if any material changes are made to an existing sweep program. The Interpretive Notice also provides that if a customer elects to participate in a sweep program offered by the FCM, then the FCM must obtain the customer's written consent prior to any funds being transferred pursuant to the program.

The Interpretive Notice also requires FCMs to advise customers of the consequences of transferring monies from the FCM's customer regulated accounts. Specifically, the FCM should disclose that by transferring excess funds from an FCM's customer regulated commodity accounts, the customer will not receive the preferential treatment afforded funds held in a customer regulated commodity account pursuant to CFTC Regulation Part 190 and the U.S. Bankruptcy Code. The Interpretive Notice recognizes, however, that an FCM may offer programs that transfer monies to an account whereby customers receive certain other protections (e.g., SIPC or FDIC) in the event of a bankruptcy. In this case, the FCM should disclose the nature and extent of the protection available, including any applicable SIPC or FDIC coverage. If the FCM's programs transfer funds to a non-regulated account that does not offer protections comparable to those afforded funds held in a customer regulated commodity account, then the FCM must clearly disclose this fact and describe the impact upon customer funds in the unlikely event that the entity maintaining the sweep account files for bankruptcy.

Failure to follow the prescribed guidelines may be deemed conduct inconsistent with a Member's obligation under NFA Compliance Rule 2-4 to observe high standards of commercial honor and just and equitable principles of trade in the conduct of its commodity futures business. The Interpretive Notice recognizes, however, that FCMs offering these sweep programs may have to modify these guidelines to address their particular programs.

2. Statutory Basis

NFA has filed these proposed regulations pursuant to Section 19(b)(7) of the Act.<sup>5</sup> The rule change is authorized by, and consistent with, Section 15A(k) of the Act.

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

The rule change will not impose any burden on competition that is not

necessary or appropriate in furtherance of the purposes of the Act and the Commodity Exchange Act.

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

NFA did not publish the rule change to the membership for comment but did discuss it with NFA's FCM Advisory Committee. NFA did not receive comment letters concerning the rule change.

**III. Date of Effectiveness of the Proposed Rules and Timing for Commission Action**

On February 26, 2007, NFA submitted the proposed Interpretive Notice to the CFTC for approval. The proposed rule change has become effective on March 12, 2007, the date of approval of the proposed rule change by the CFTC.

Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Exchange Act.<sup>6</sup>

**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. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NFA-2007-02 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NFA-2007-02. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/>

<sup>5</sup> 15 U.S.C. 78s(b)(7).

<sup>6</sup> 15 U.S.C. 78s(b)(1).

rules/sro.shtml). 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NFA-2007-02 and should be submitted on or before June 6, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-9371 Filed 5-15-07; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55735; File No. SR-NYSE-2007-06]

### Self-Regulatory Organizations; New York Stock Exchange LLC.; Order Approving Proposed Rule Change To Amend NYSE Rule 440A ("Telephone Solicitations")

May 10, 2007.

#### I. Introduction

On January 25, 2007, the New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Rule 440A, addressing member organizations' telephone solicitations of customers. The proposed rule change was published for comment in the **Federal Register** on March 29, 2007.<sup>3</sup> The Commission received no comments

on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

NYSE Rule 440A generally addresses member organizations' telephone solicitations of customers. Rule 440A(g) provides "No member or member organization may use a telephone facsimile machine, computer or other device to send an unsolicited advertisement to a telephone facsimile machine, computer or other device." Subsection 440A(g)(1) further provides that a facsimile advertisement is not "unsolicited" where the recipient has granted the member organization prior express invitation or permission to deliver the advertisement, as further defined in the Rule. This proposed rule change provided that such an advertisement also will not be considered "unsolicited" where there is an "established business relationship" as defined in the present Rule 440A(j). In addition, the Exchange proposed to delete the term "member" as used in the Rule to reflect the recent reorganization of the Exchange,<sup>4</sup> and the term "allied member" as redundant within the context of the present regulation.

The amendments to Rule 440A(g) were adopted by the Exchange on December 2, 2004<sup>5</sup> to incorporate regulations issued by the Federal Communications Commission ("FCC") and the Federal Trade Commission ("FTC") relating to the implementation of the National Do Not Call registry and the amendments to the Telephone Consumer Protection Act of 1991.<sup>6</sup> The FCC and FTC regulations contained no exception for facsimiles sent to customers with which a broker-dealer had an "established business relationship" as such term was defined. Subsequently, Congress passed legislation<sup>7</sup> which restored an exemption for unsolicited faxes sent to a recipient with whom the sender had an established business relationship. Accordingly, the proposed amendments to NYSE Rule 440A(g)(1) added an exception for established business relationships to the definition of "unsolicited" and set forth the measures necessary for a customer to opt out of the receipt of further communications. These standards, which are taken from

applicable FCC regulations,<sup>8</sup> generally require that the member organization and the person not only have an established business relationship,<sup>9</sup> but also that the member organization obtain the fax number from the recipient (or the recipient's web site, directory, or advertisement). Further, the recipient must not have stated on those materials that they do not accept unsolicited advertisements at the listed number. Under the proposed rule change, the member organization must also take reasonable steps to verify that the recipient consented to have the number listed.

#### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the Act and, in particular, with Section 6(b)(5) of the Act, which requires, among other things, that the NYSE's rules be designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.<sup>10</sup> The Commission believes that in bringing the NYSE's Rule setting forth the definition and treatment of unsolicited telemarketing communications into concurrence with FCC regulations, the proposed rule change will harmonize currently disparate regulations and therefore provide greater clarity, both to members and customers, as to which communications between members and customers qualify as "unsolicited."<sup>11</sup>

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>12</sup> that the proposed rule change (SR-NYSE-2007-06), be, and hereby is, approved.

<sup>8</sup> FCC 06-42 (Apr. 5, 2006), 71 FR 56893 (Sept. 28, 2006).

<sup>9</sup> An established business relationship is defined as a prior existing relationship formed by voluntary two-way communication between a member organization and a person where the person has, generally speaking, done business with the member organization within the 18 months preceding the telephone call, the member organization is the broker-dealer of record for the person's account within those 18 months, or the person has contacted the member organization to inquire about a product or service within the three months preceding the telephone call.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Exchange Act Release No. 55517 (Mar. 23, 2007), 72 FR 14842 (Mar. 29, 2007).

<sup>4</sup> See Exchange Act Release No. 53382 (Feb. 27, 2006), 71 FR 11251 (Mar. 6, 2006) (SR-NYSE-2005-77).

<sup>5</sup> See Exchange Act Release No. 34-52579 (Oct. 7, 2005), 70 FR 60119 (Oct. 14, 2005) (SR-NYSE-2004-73).

<sup>6</sup> Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, FCC 03-153 (Jun. 26, 2003), 68 FR 44144 (Jul. 25, 2003).

<sup>7</sup> Junk Fax Prevention Act of 2005, Pub. L. 109-21, 119 Stat. 359 (2005).