

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-7343 Filed 3-26-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** [68 FR 12723, March 17, 2003].

**STATUS:** Closed Meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING:** Tuesday, March 18, 2003 at 10 a.m. and Thursday, March 20, 2003 at 10 a.m.

**CHANGE IN THE MEETING:** Additional Items.

The following items were added to the Closed Meeting held on Tuesday, March 18, 2003 and Thursday, March 20, 2003:

Formal orders of investigation.

Commissioner Goldschmid, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: March 17, 2003.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 03-7480 Filed 3-25-03; 11:09 am]

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of March 24, 2003:

Closed meetings will be held on

Tuesday, March 25, 2003 at 2:30 p.m., and Thursday, March 27, 2003 at 10 a.m.

Commissioner Atkins, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

The subject matter of the closed meeting scheduled for Tuesday, March 25, 2003 will be:

Formal orders of investigation;

Institution and settlement of injunctive actions;

Settlement of administrative proceedings of an enforcement nature; Opinions; and

Amici consideration.

The subject matter of the closed meeting scheduled for Thursday, March 27, 2003 will be:

Formal orders of investigations;

Institution and settlement of administrative proceedings of an enforcement nature; and

Institution and settlement of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: March 24, 2003.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 03-7481 Filed 3-25-03; 11:09 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47550; File No. SR-NASD-2003-45]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. To Adopt, on a Permanent Basis, Margin Requirements for Security Futures Contracts Pursuant to NASD Rule 2520

March 20, 2003.

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> notice is hereby given that on March 19, 2003, the National Association of Securities Dealers, Inc. ("NASD"), 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 NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD proposes to adopt, on a permanent basis, amendments to NASD Rule 2520 establishing margin requirements for security futures contracts ("SFCs"). The SEC originally approved these amendments on a pilot basis ("the Pilot") until March 6, 2003,<sup>3</sup> and thereafter extended the Pilot until March 20, 2003.<sup>4</sup> NASD believes that the proposed rule change would make its margin rule consistent with margin rules already adopted by the SEC, the Commodity Futures Trading Commission ("CFTC") and other self-regulatory organizations ("SROs") regarding security futures contracts.

Specifically, the proposed rule change would: (1) Permit customer margining of security futures contracts, and establish initial and maintenance margin requirements for security futures contracts; (2) allow for initial and maintenance margin levels for offsetting positions involving security futures contracts and related positions at lower levels than would be required if

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

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

<sup>3</sup> See Securities Exchange Act Release No. 47244 (January 24, 2003), 68 FR 5317 (February 3, 2003) (SR-NASD-2002-166).

<sup>4</sup> See Securities Exchange Act Release No. 47470 (March 7, 2003), 68 FR 12397 (March 14, 2003) (SR-NASD-2003-31).

margined separately; (3) provide for a Market Maker exclusion for proprietary trades of a "Security Futures Dealer" ("SFD") and allow for "good faith" margin treatment for the accounts of approved options specialists, market makers, and other specialists; (4) provide definitions relative to security futures contracts for application of this rule; (5) provide that security futures contracts transacted in a futures account shall not be subject to any provisions of NASD Rule 2520; (6) provide for money market mutual funds as defined in rule 2a-7<sup>5</sup> under the Investment Company Act of 1940 (the "ICA"),<sup>6</sup> to be used to satisfy margin requirements for security futures contracts provided certain conditions are met; (7) require that security futures contracts transacted in a securities account be subject to all other provisions of NASD rule 2520, particularly Rule 2520(f)(8)(B) ("Day Trading"); and (8) permit members for which NASD is the Designated Examining Authority ("DEA") to participate in the trading of security futures contracts.

In addition, NASD is proposing non-substantive technical changes to NASD Rule 2520.<sup>7</sup>

Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in brackets.

\* \* \* \* \*

## 2520. Margin Requirements

### (a) Definitions

For the purposes of this paragraph, the following term shall have the meanings specified below:

(1) The term "basket" shall mean a group of stocks that NASD or any national securities exchange designates as eligible for execution in a single trade through its trading facilities and that consists of stocks whose inclusion and relative representation in the group are determined by the inclusion and relative representation of their current market prices in a widely-disseminated stock index reflecting the stock market as a whole.

(2) The term "current market value" means the total cost or net proceeds of a security on the day it was purchased or sold or at any other time the preceding business day's closing price as shown by any regularly published reporting or quotation service, *except*

*for security futures contracts (see paragraph (f)(11)(C)(ii)).* If there is no closing price, a member may use a reasonable estimate of the market value of the security as of the close of business on the preceding business day.

(3) The term "customer" means any person for whom securities are purchased or sold or to whom securities are purchased or sold whether on a regular way, when issued, delayed or future delivery basis. It will also include any person for whom securities are held or carried and to or for whom a member organization extends, arranges or maintains any credit. The term will not include the following: (a) a broker or dealer from whom a security has been purchased or to whom a security has been sold for the account of the member organization or its customers, or (b) an "exempted borrower" as defined by Regulation T of the Board of Governors of the Federal Reserve System ("Regulation T"), except for the proprietary account of a broker/dealer carried by a member organization pursuant to section (e)(6) of this rule.

(4) The term "designated account" means the account of a bank, trust company, insurance company, investment trust, state or political subdivision thereof, charitable or nonprofit educational institution regulated under the laws of the United States or any state, or pension or profit sharing plan subject to ERISA or of an agency of the United States or of a state or a political subdivision thereof.

(5) The term "equity" means the customer's ownership interest in the account, computed by adding the current market value of all securities "long" and the amount of any credit balance and subtracting the current market value of all securities "short" and the amount of any debit balance. *Any variation settlement received or paid on a security futures contract shall be considered a credit or debit to the account for purposes of equity.*

(6) The term "exempted security" or "exempted securities" has the meaning as in section 3(a)(12) of the Act.

(7) The term "margin" means the amount of equity to be maintained on a security position held or carried in an account.

(8) The term "person" has the meaning as in section 3(a)(9) of the Act.

### (b) Initial Margin

For the purpose of effecting new securities transactions and commitments, the customer shall be required to deposit margin in cash and/or securities in the account which shall be at least the greater of:

(1) the amount specified in regulation T, or rules 400 through 406 under the Act or rules 41.42 through 41.48 under the Commodity Exchange Act ("CEA"); or

(2) the amount specified in section (c)[(3)] of this rule; or

(3) such greater amount as NASD [the Association] may from time to time require for specific securities; or

(4) equity of at least \$2,000 except that cash need not be deposited in excess of the cost of any security purchased (this equity and cost of purchase provision shall not apply to "when distributed" securities in a cash account). The minimum equity requirement for a "pattern day trader" is \$25,000 pursuant to paragraph (f)(8)(B)(iv)a. of this rule.

Withdrawals of cash or securities may be made from any account which has a debit balance, "short" position or commitments, provided it is in compliance with regulation T and rules 400 through 406 under the Act and rules 41.42 through 41.48 under the CEA, and after such withdrawal the equity in the account is at least the greater of \$2,000 (\$25,000 in the case of a "pattern day trader") or an amount sufficient to meet the maintenance margin requirements of this rule.

### (c) Maintenance Margin

The margin that must be maintained in all accounts of customers, except for cash accounts subject to other provisions of this rule, shall be as follows:

(1) 25 percent of the current market value of all securities, *except for security futures contracts*, "long" in the account; plus

(2) \$2.50 per share or 100 percent of the current market value, whichever amount is greater, of each stock "short" in the account selling at less than \$5.00 per share; plus

(3) \$5.00 per share or 30 percent of the current market value, whichever amount is greater, of each stock "short" in the account selling at \$5.00 per share or above; plus

(4) 5 percent of the principal amount or 30 percent of the current market value, whichever amount is greater, of each bond "short" in the account.

(5) *The minimum maintenance margin levels for security futures contracts, long and short, shall be 20 percent of the current market value of such contract. (See paragraph (f) of this rule for other provisions pertaining to security futures contracts.)*

(d) No Change.

<sup>5</sup> 17 CFR 270.2a-7.

<sup>6</sup> 15 U.S.C. 80a *et seq.*

<sup>7</sup> See NASD Rule 2520(b)(2); (b)(3); (e)(7)(B); and (e)(8). Telephone conversation between Patricia Albrecht, Assistant General Counsel, NASD, and Lisa N. Jones, Attorney, Division of Market Regulation, Commission, dated March 18, 2003.

(e) *Exceptions to Rule*

The foregoing requirements of this rule are subject to the following exceptions: (1) through (5) No Change.

(6) *Broker/Dealer Accounts*

(A) A member may carry the proprietary account of another broker/dealer, which is registered with the Commission, upon a margin basis which is satisfactory to both parties, provided the requirements of regulation T and rules 400 through 406 under the Act and rules 41.42 through 41.48 under the CEA are adhered to and the account is not carried in a deficit equity condition. The amount of any deficiency between the equity maintained in the account and the haircut requirements pursuant to SEC rule 15c3-1 shall be charged against the member's net capital when computing net capital under SEC rule 15c3-1.

(B) No Change.

(7) *Nonpurpose Credit*

In a nonsecurities credit account, a member may extend and maintain nonpurpose credit to or for any customer without collateral or on any collateral whatever, provided:

(A) the account is recorded separately and confined to the transactions and relations specifically authorized by regulation T;

(B) the account is not used in any way for the purpose of evading or circumventing any regulation of NASD [the Association] or of the Board of Governors of the Federal Reserve System and rules 400 through 406 under the Act and rules 41.42 through 41.48 under the CEA; and

(C) the amount of any deficiency between the equity in the account and the margin required by the other provisions of this paragraph shall be charged against the member's net capital as provided in SEC rule 15c3-1.

The term "nonpurpose credit" means an extension of credit other than "purpose credit," as defined in section 220.2 of regulation T.

(8) No Change.<sup>8</sup>

(f) *Other Provisions*

(1) through (10) No Change.

(11) *Customer Margin rules Relating to Security Futures*

(A) *Applicability*

No member may effect a transaction involving, or carry an account containing, a security futures contract with or for a customer in a margin account, without obtaining proper and adequate margin as set forth in this section. (B) *Amount of customer margin.*

(i) *General rule.* As set forth in paragraphs (b) and (c) of this rule, the minimum initial and maintenance

margin levels for each security futures contract, long and short, shall be twenty (20) percent of the current market value of such contract.

(ii) *Excluded from the rule's requirements are arrangements between a member and a customer with respect to the customer's financing of proprietary positions in security futures, based on the member's good faith determination that the customer is an "Exempted Person," as defined in rule 401(a)(9) under the Act, and rule 41.43(a)(9) under the CEA, except for the proprietary account of a broker/dealer carried by a member pursuant to paragraph (e)(6)(A) of this rule. Once a registered broker or dealer, or member of a national securities exchange ceases to qualify as an "Exempted Person," it shall notify the member of this fact before establishing any new security futures positions. Any new security futures positions will be subject to the provisions of this paragraph.*

(iii) *Permissible Offsets.* Notwithstanding the minimum margin levels specified in paragraph (f)(11)(B)(i) of this rule, customers with offset positions involving security futures and related positions may have initial or maintenance margin levels (pursuant to the offset table below) that are lower than the levels specified in paragraph (f)(11)(B)(i) of this rule.

Description of offset	Security underlying the security future	Initial margin requirement	Maintenance margin requirement
(1) Long security future (or basket of security futures representing each component of a narrow-based securities index) and long put option on the same underlying security (or index).	Individual stock or narrow-based security index.	20 percent of the current market value of the long security future, plus pay for the long put in full.	The lower of: (1) 10 percent of the aggregate exercise price of the put plus the aggregate put out-of-the-money amount, if any; or (2) 20 percent of the current market value of the long security future.
(2) Short security future (or basket of security futures representing each component of a narrow-based securities index) and short put option on the same underlying security (or index).	Individual stock or narrow-based security index.	20 percent of the current market value of the short security future, plus the aggregate put-in-the-money amount, if any. Proceeds from the put sale may be applied.	20 percent of the current market value of the short security future, plus the aggregate put in-the-money amount, if any.
(3) Long security future and short position in the same security (or securities basket) underlying the security future.	Individual stock or narrow-based security index.	The initial margin required under Regulation T for the short stock or stocks.	5 percent of the current market value as defined in Regulation T of the stock or stocks underlying the security future.
(4) Long security future (or basket of security futures representing each component of a narrow-based securities index) and short call option on the same underlying security (or index).	Individual stock or narrow-based security index.	20 percent of the current market value of the long security future, plus the aggregate call-in-the-money amount, if any. Proceeds from the call sale may be applied.	20 percent of the current market value of the long security future, plus the aggregate call in-the-money amount, if any.
(5) Long a basket of narrow-based security futures that together tracks a broad-based index and short a broad-based security index call option contract on the same index.	Narrow-based security index .....	20 percent of the current market value of the long basket of narrow-based security futures, plus the aggregate call in-the-money amount, if any. Proceeds from the call sale may be applied.	20 percent of the current market value of the long basket of narrow-based security futures, plus the aggregate call in-the-money amount, if any.

<sup>8</sup> This provision of the rule text reflects the correction of a typographical error from the rule text

that NASD submitted with the proposed rule change.

Description of offset	Security underlying the security future	Initial margin requirement	Maintenance margin requirement
(6) Short based of narrow-based security futures that together tracks a broad-based security index and short a broad-based security index put option contract on the same index.	Narrow-based security index .....	20 percent of the current market value of the short basket of narrow-based security futures, plus the aggregate put in-the-money amount, if any. Proceeds from the put sale may be applied.	20 percent of the current market value of the short basket of narrow-based security futures, plus the aggregate put in-the-money amount, if any.
(7) Long a basket of narrow-based security futures that together tracks a broad-based security index and long a broad-based security index put option contract on the same index.	Narrow-based security index .....	20 percent of the current market value of the long basket of narrow-based security futures, plus pay for the long put in full.	The lower of: (1) 10 percent of the aggregate exercise price of the put, plus the aggregate put out-of-the-money amount, if any; or (2) 20 percent of the current market value of the long basket of security futures.
(8) Short a basket of narrow-based security futures that together tracks a broad-based security index and long a broad-based security index call option contract on the same index.	Narrow-based security index .....	20 percent of the current market value of the short basket of narrow-based security futures, plus pay for the long call in full.	The lower of: (1) 10 percent of the aggregate exercise price of the call, plus the aggregate call out-of-the-money amount, if any; or (2) 20 percent of the current market value of the short basket of security futures.
(9) Long security future and short security future on the same underlying security (or index).	Individual stock or narrow-based security index.	The greater of: 5 percent of the current market value of the long security future; or (2) 5 percent of the current market value of the short security future.	The greater of: 5 percent of the current market value of the long security future; or (2) 5 percent of the current market value of the short security future.
(10) Long security future, long put option and short call option. The long security future, long put and short call must be on the same underlying security and the put and call must have the same exercise price (Conversion).	Individual stock or narrow-based security index.	20 percent of the current market value of the long security future, plus the aggregate call in-the-money amount, if any, plus pay for the put in full. Proceeds from the call sale may be applied.	10 percent of the aggregate exercise price, plus the aggregate call in-the-money amount, if any.
(11) Long security future, long put option and short call option. The long security future, long put and short call must be on the same underlying security and the put exercise price must be below the call exercise price (Collar).	Individual stock or narrow-based security index.	20 percent of the current market value of the long security future, plus the aggregate call in-the-money amount, if any, plus pay for the put in full. Proceeds from call sale may be applied.	The lower of: (1) 10 percent of the aggregate exercise price of the put plus the aggregate put out-of-the-money amount, if any; or (2) 20 percent of the aggregate exercise price of the call, plus the aggregate call in-the-money amount, if any.
(12) Short security future and long position in the same security (or securities basket) underlying the security future.	Individual stock or narrow-based security index.	The initial margin required under Regulation T for the long security or securities.	5 percent of the current market value, as defined in Regulation T, of the long stock or stocks.
(13) Short security future and long position in a security immediately convertible into the same security future, without restriction, including the payment of money.	Individual stock or narrow-based security index.	The initial margin required under Regulation T for the long security or securities.	10 percent of the current market value, as defined in Regulation T, of the long stock or stocks.
(14) Short security future (or basket of security futures representing each component of a narrow-based securities index) and long call option or warrant on the same underlying security (or index).	Individual stock or narrow-based security index.	20 percent of the current market value of the short security future, plus pay for the call in full.	The lower of: (1) 10 percent of the aggregate exercise price of the call, plus the aggregate call out-of-the-money amount, if any; or (2) 20 percent of the current market value of the short security future.
(15) Short security future, short put option and long call option. The short security future, short put and long call must be on the same underlying security and the put and call must have the same exercise price (Reverse Conversion).	Individual stock or narrow-based security index.	20 percent of the current market value of the short security future, plus the aggregate put in-the-money amount, if any, plus pay for the call in full. Proceeds from put sale may be applied.	10 percent of the aggregate exercise price, plus the aggregate put in-the-money amount, if any.
(16) Long (short) a security future and short (long) an identical <sup>9</sup> security future traded on a different market.	Individual stock and narrow-based security index.	The greater of: (1) 3 percent of the current market value of the long security future(s); or (2) 3 percent of the current market value of the short security future(s).	The greater of: (1) 3 percent of the current market value of the long security future(s); or (2) 3 percent of the current market value of the short security future(s).

Description of offset	Security underlying the security future	Initial margin requirement	Maintenance margin requirement
(17) Long (short) a basket of security futures that together tracks a narrow-based index and short (long) a narrow-based index future.	Individual stock or narrow-based security index.	Threator of: (1) 5 percent of the current market value of the long security future(s); or (2) 5 percent of the current market value of the short security future(s).	The greater of: (1) 5 percent of the current market value of the long security future(s); or (2) 5 percent of the current market value of the short security future(s).

(C) *Definitions.* For the purposes of paragraph (f)(11) of this rule and the offset table noted above, with respect to the term “security futures contracts,” the following terms shall have the meanings specified below:

(i) The term “security futures contract” means a “security future” as defined in section 3(a)(55) of the Act.

(ii) The term “current market value” has the same meaning as defined in rule 401(a)(4) under the Act and rule 41.43(a)(4) under the CEA.

(iii) The term “underlying security” means, in the case of physically settled security futures contracts, the security that is delivered upon expiration of the contract, and, in the case of cash settled security futures contracts, the security or securities index the price or level of which determines the final settlement price for the security futures contract upon its expiration.

(iv) The term “underlying basket” means, in the case of a securities index, a group of security futures contracts where the underlying securities as defined in subparagraph (iii) above include each of the component securities of the applicable index and that meets the following conditions: (1) The quantity of each underlying security is proportional to its representation in the index, (2) the total market value of the underlying securities is equal to the aggregate value of the applicable index, (3) the basket cannot be used to offset more than the number of contracts or warrants represented by its total market value, and (4) the security futures contracts shall be unavailable to support any other contract or warrant transaction in the account.

(v) The term “underlying stock basket” means a group of securities that includes each of the component securities of the applicable index and that meets the following conditions: (1) The quantity of each stock in the basket is proportional to its representation in the index, (2) the total market value of the basket is equal to the underlying

index value of the index options or warrants to be covered, (3) the securities in the basket cannot be used to cover more than the number of index options or warrants represented by that value, and (4) the securities in the basket shall be unavailable to support any other option or warrant transaction in the account.

(vi) The term “variation settlement” has the same meaning as defined in rule 401(a) under the Act and rule 41.43(a)(32) under the CEA.

(D) *Security Futures Dealers’ Accounts*

(i) Notwithstanding the other provisions of this paragraph (f)(11), a member may carry and clear the market maker permitted offset positions (as defined below) of one or more security futures dealers in an account that is limited to market maker transactions, upon a “Good Faith” margin basis that is satisfactory to the concerned parties, provided the “Good Faith” margin requirement is not less than the Net Capital haircut deduction of the member carrying the transaction pursuant to rule 15c3-1 under the Act. In lieu of collecting the “Good Faith” margin requirement, a carrying member may elect to deduct in computing its Net Capital the amount of any deficiency between the equity maintained in the account and the “Good Faith” margin required.

For the purpose of this paragraph (f)(11)(D), the term “security futures dealer” means (1) a member or member organization of a national securities exchange or a national securities association registered pursuant to section 15A(a) of the Act; (2) is registered with such exchange or association as a security futures dealer pursuant to rules that are effective in accordance with section 19(b)(2) of the Act and, as applicable section 5c(c) of the CEA, that: (a) Requires such member or member organization to be registered as a floor trader or a floor broker with the CFTC under section 4f(a)(1) of the CEA, or as a dealer with the Commission under section 15(b) of the Act; (b) requires such member or member organization to maintain records sufficient to prove compliance with the rules of the exchange or

association of which it is a member; (c) requires such member or member organization to hold itself out as being willing to buy and sell security futures for its own account on a regular and continuous basis; and (d) provides for disciplinary action, including revocation of such member’s or member organization’s registration as a security futures dealer, for such member’s or member organization’s failure to comply with rule 400 through 406 of the Act and rules 41.42 through 41.49 of the CEA or the rules of the exchange or association of which the security futures dealer is a member or member organization.

(ii) For purposes of this paragraph (f)(11)(D), a permitted offset position means in the case of a security futures contract in which a security futures dealer makes a market, a position in the underlying asset or other related assets, or positions in options overlying the asset or related assets. Accordingly, a security futures dealer may establish a long or short position in the assets underlying the security futures contracts in which the security futures dealer makes a market, and may purchase or write options overlying those assets if the account holds the following permitted offset positions:

a. A long position in the security futures contract or underlying asset offset by a short option position that is “in or at the money;”

b. A short position in the security futures contract or underlying asset offset by a long option position that is “in or at the money;”

c. A position in the underlying asset resulting from the assignment of a market-maker short option position or making delivery in respect of a short security futures contract;

d. A position in the underlying asset resulting from the assignment of a market-maker long option position or taking delivery in respect of a long security futures contract;

e. A net long position in a security futures contract in which a security futures dealer makes a market or the underlying asset;

f. A net short position in a security futures contract in which a security futures dealer makes a market or the underlying asset; or

<sup>9</sup>Two security futures contracts will be considered “identical” for this purpose if they are issued by the same clearing agency or cleared and guaranteed by the same derivatives clearing organization, have identical specifications, and would offset each other at the clearing level.

g. An offset position as defined in rule 15c3-1 under the Act, including its appendices, or any applicable SEC staff interpretation or no-action position.

(E) Approved Options Specialists' or Market Maker Accounts

(i) Notwithstanding the other provisions of (f)(11) and (f)(2)(J), a member may carry and clear the market maker permitted offset positions (as defined below) of one or more approved options specialists or market makers in an account that is limited to approved options specialist or market maker transactions, upon a "Good Faith" margin basis that is satisfactory to the concerned parties, provided the "Good Faith" margin requirement is not less than the Net Capital haircut deduction of the member carrying the transaction pursuant to rule 15c3-1 under the Act. In lieu of collecting the "Good Faith" margin requirement, a carrying member may elect to deduct in computing its Net Capital the amount of any deficiency between the equity maintained in the account and the "Good Faith" margin required. For the purpose of this paragraph (f)(11)(E), the term "approved options specialist or market maker" means a specialist, market maker, or registered trader in options as referenced in paragraph (f)(2)(J) of this rule, who is deemed a specialist for all purposes under the Act and who is registered pursuant to the rules of a national securities exchange.

(ii) For purposes of this paragraph (f)(11)(E), a permitted offset position means a position in the underlying asset or other related assets. Accordingly, a specialist or market maker may establish a long or short position in the assets underlying the options in which the specialist or market maker makes a market, or a security futures contract thereon, if the account holds the following permitted offset positions:

a. A long position in the underlying instrument or security futures contract offset by a short option position that is "in or at the money;"

b. A short position in the underlying instrument or security futures contract offset by a long option position that is "in or at the money;"

c. A stock position resulting from the assignment of a market-maker short option position or delivery in respect of a short security futures contract;

d. A stock position resulting from the exercise of a market maker long option position or taking delivery in respect of a long security futures contract;

e. A net long position in a security (other than an option) in which the market maker makes a market;

f. A net short position in a security (other than an option) in which the market maker makes a market; or

g. An offset position as defined in rule 15c3-1 under the Act, including its appendices, or any applicable SEC staff interpretation or no-action position.

(iii) For purposes of paragraphs (f)(11)(D) and (E), the term "in or at the money" means that the current market price of the underlying security is not more than two standard exercise intervals below (with respect to a call option) or above (with respect to a put option) the exercise price of the option; the term "in the money" means that the current market price of the underlying asset or index is not below (with respect to a call option) or above (with respect to a put option) the exercise price of the option; the term "overlying option" means a put option purchased or a call option written against a long position in an underlying asset; or a call option purchased, or a put option written against a short position in an underlying asset.

(iv) Securities, including options and security futures contracts, in such accounts shall be valued conservatively in light of current market prices and the amount that might be realized upon liquidation. Substantial additional margin must be required or excess Net Capital maintained in all cases where the securities carried: (a) Are subject to unusually rapid or violent changes in value including volatility in the expiration months of options or security futures contracts, (b) do not have an active market, or (c) in one or more or all accounts, including proprietary accounts combined, are such that they cannot be liquidated promptly or represent undue concentration of risk in view of the carrying member's Net Capital and its overall exposure to material loss.

(F) Approved Specialists' Accounts—others

(i) Notwithstanding the other provisions of (f)(11) and (f)(2)(J), a member may carry the account of an "approved specialist," which account is limited to specialist transactions including hedge transactions with security futures contracts upon a margin basis that is satisfactory to both parties. The amount of any deficiency between the equity in the account and haircut requirement pursuant to rule 15c3-1 shall be charged against the member's net capital when computing net capital under SEC rule 15c3-1.

(ii) For purposes of this paragraph (f)(11)(F), the term "approved specialist" means a specialist who is deemed a specialist for all purposes

under the Act and who is registered pursuant to the rules of a national securities exchange.

(G) Additional Requirements

(i) Money market mutual funds, as defined in rule 2a-7 under the Investment Company Act of 1940, can be used for satisfying margin requirements under this paragraph (f)(11), provided that the requirements of rule 404(b) under the Act and rule 46(b)(2) under the CEA are satisfied.

(ii) Day trading of security futures is subject to the minimum requirements of this rule. If deemed a pattern day-trader, the customer must maintain equity of \$25,000. The 20 percent requirement, for security futures contracts, should be calculated based on the greater of the initial or closing transaction and any amount exceeding NASD excess must be collected. The creation of a customer call subjects the account to all the restrictions contained in rule 2520(f)(8)(B).

(iii) The use of the "time and tick" method is based on the member's ability to substantiate the validity of the system used. Lacking this ability dictates the use of the aggregate method.

(iv) Security futures contracts transacted or held in a futures account shall not be subject to any provision of this rule.

## 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 and is 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 Rule Change

### 1. Purpose

#### Background

The CFTC and SEC have adopted customer margin requirements for SFCs ("SEC/CFTC Margin Regulations")<sup>10</sup> pursuant to authority delegated to them by the Federal Reserve Board ("FRB") under section 7(c)(2)(B) of the Act.<sup>11</sup> As noted in the adopting release,<sup>12</sup> section 7(c)(2) of the Act provides that the

<sup>10</sup> 17 CFR 242.400 through 406.

<sup>11</sup> 15 U.S.C. 78g(c)(2)(B).

<sup>12</sup> Securities Exchange Act Release No. 46292 (August 1, 2002), 67 FR 53146 (August 14, 2002).

customer margin requirements for SFCs must satisfy four requirements: (1) They must preserve the financial integrity of markets trading SFCs; (2) they must prevent systemic risk; (3) they must (a) be consistent with the margin requirements for comparable options traded on an exchange registered pursuant to section 6(a) of the Act,<sup>13</sup> and (b) provide for initial and maintenance margin that are not lower than the lowest level of margin, exclusive of premium, required for comparable exchange traded options; and (4) they must be and remain consistent with the margin requirements established by the FRB under Regulation T.<sup>14</sup> These margin regulations became effective on September 13, 2002.

Subsequent to the adoption of the SEC/CFTC Margin Regulations, NASD filed proposed amendments to NASD rule 2520.<sup>15</sup> On January 24, 2003, the Commission approved the amendments on a pilot basis until March 6, 2003.<sup>16</sup> On March 5, 2003, the Commission extended the Pilot until March 20, 2003, to allow the Pilot to permit customers to continue trading SFCs on an uninterrupted basis in securities accounts while NASD considered the comments it received on the Pilot.<sup>17</sup>

Among the amendments approved as part of the Pilot was new NASD rule 2520(f)(11) ("Customer Margin Rules Relating to Security Futures"), which provides that SFCs transacted in a securities account be subject to all other provisions of NASD rule 2520, including 2520(f)(8)(B) ("Day Trading"). Also approved as part of the Pilot were NASD rule 2520(f)(11)(D) ("Security Futures Dealers' Accounts"), rule 2520(f)(11)(E) ("Approved Options Specialists' or Market Makers' Accounts"), and rule 2520(f)(11)(F) ("Approved Specialists' Accounts—others"). Under the Pilot, NASD rule 2520 permits "good faith" margin treatment for specified hedged offset positions carried in the accounts noted above.

However, unlike the SFD rules of other SROs,<sup>18</sup> The Pilot permits members to accord offset treatment in accounts carried for such specialists,

market makers, and SFDs only when their activity is limited to bona fide specialist or market making transactions. The limitations imposed are consistent with NASD's belief that market makers bear the primary responsibility and obligation to maintain fair and orderly markets, and provide liquidity to the marketplace.

#### Discussion of Comments Received

NASD received one comment letter on the Pilot from the Chicago Board Options Exchange, Inc. ("CBOE").<sup>19</sup> In its letter, the CBOE requested that the Commission not grant permanent approval of NASD's rule as proposed and approved on a pilot basis, unless NASD amended the rule to exempt SFCs from its day trading provisions and deleted references to the term "bona fide" in connection with market maker or specialist transactions.

Under the proposed rule change, NASD's day trading margin requirements would apply to SFCs carried in securities accounts. The CBOE believes that day trading provisions should not apply to such accounts because it would create a disparity that the CFMA was designed to eliminate. In this regard, CBOE's letter states that the SEC and CFTC did not impose day trading margin requirements on SFCs carried in futures and securities accounts. The CBOE argues that since similar margin rules recently approved by the Commission do not impose day trading margin requirements on SFCs carried in futures accounts, permanent approval of NASD's proposed rule would lead to a regulatory disparity the CFMA was designed to prevent.

NASD states that, in proposing its rule amendment on the application of day trading margin requirements to SFCs carried in securities accounts, it did not intend to create a regulatory disparity with other SRO rules. However, NASD notes that SRO rules can be more stringent than those of the Commission.

<sup>19</sup> See letter from Edward J. Joyce, President and Chief Operating Officer ("COO"), CBOE, to Jonathan G. Katz, Secretary, Commission, dated December 20, 2002. CBOE's December 20, 2002 comment letter on NASD's Pilot is a resubmission of its December 9, 2002 comment letter regarding the NYSE's proposed amendments to NYSE Rule 431 relating to margin requirements for security futures contracts. See Securities Exchange Act Release No. 46782 (November 7, 2003), 67 FR 69052 (November 14, 2002) (SR-NYSE-2002-53). The CBOE stated that because the proposed amendments were so similar in nature, its comments on the NYSE's proposed amendments were applicable to NASD's proposed rule change. On March 6, 2003, the Commission approved on a permanent basis amendments to NYSE Rule 431 to incorporate security futures contracts. Securities Exchange Act Release No. 47460, 68 FR 12123 (March 13, 2003) (SR-NYSE-2003-05).

While NASD is guided by the Commission's rules in proposing its rules, NASD has latitude to promulgate more stringent rules when it believes they are necessary for the protection of investors. In this regard, NASD believes that the application of day trading margin requirements of NASD rule 2520 to SFCs is consistent with the treatment of all securities transacted in a margin account under this rule. Accordingly, NASD proposes to apply NASD's day trading margin requirements to SFCs carried in securities accounts.

The CBOE also believes that NASD should delete the term "bona fide" in connection with market maker or specialist transactions. The CBOE commented that NASD does not define the term "bona fide" nor does it use the term in relation to the other provisions of its margin rule relating to market maker and specialist transactions.

In response to these comments, NASD is proposing to amend the rule text by deleting the term "bona fide" in connection with specialist or market maker transactions. In proposing such language under the Pilot, it was NASD's intent to permit good faith margin treatment for off-setting positions that were effected by specialists or market makers in discharging the primary responsibilities noted above in its original filing, rather than to permit persons other than qualified market makers to act in such a capacity—hence, the term "bona fide" in connection with specialist and market making transactions. Upon consideration, and in order to be consistent with similar rules proposed by other SROs, NASD will not use the term "bona fide" and instead incorporate the definition of an SFD as referenced in rule 400(c)(2)(v)<sup>20</sup> under the Act to clarify what constitutes a SFD for purposes of the rule. Notwithstanding this amendment, NASD reiterates that good faith margin treatment will be permitted only for transactions effected by SFDs in discharging their responsibilities and obligations to maintain fair and orderly markets, and to provide liquidity to the marketplace.

#### 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,<sup>21</sup> 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.

<sup>20</sup> 17 CFR 240.400(c)(2)(v).

<sup>21</sup> 15 U.S.C. 78o-3(b)(6).

<sup>13</sup> 15 U.S.C. 78f.

<sup>14</sup> 12 CFR 220.

<sup>15</sup> On March 6, 2003, the Commission approved a proposed rule change by the NYSE to adopt, on a permanent basis, margin requirements for security futures contracts pursuant to NYSE Rule 431. See Securities Exchange Act Release No. 47460, 68 FR 12123 (March 13, 2003) (SR-NYSE-2003-05).

<sup>16</sup> See *supra* note 3.

<sup>17</sup> See *supra* note 4.

<sup>18</sup> See *e.g.*, Securities Exchange Act Release No. 46555 (September 26, 2002), 67 FR 61707 (October 1, 2002) (SR-OC-2002-01).

NASD believes that the proposed rule change is designed to accomplish these goals by permitting customers to trade SFCs in securities accounts.

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

NASD 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.

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

NASD received written comments from the CBOE on the original proposed rule change that was filed with the Commission on November 15, 2002 and amended on January 15, 2003. NASD has responded to the CBOE's comments and hereby amends its original rule proposal filed with the Commission on November 15, 2002.

**III. 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. 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-2003-45 and should be submitted by April 17, 2003.

**IV. Commission Findings and Order Granting Accelerated Approval of a Proposed Rule Change**

The NASD has asked that the Commission approve the proposed rule change prior to the thirtieth day after publication of notice of the filing in the **Federal Register** to accommodate the continuance of trading of security futures in securities accounts pursuant to NASD rule 2520 on an uninterrupted

basis after the Pilot ends on March 20, 2003. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission believes that the proposed rule change is consistent with the requirements of 15A(b)(6) of the Act,<sup>22</sup> which requires, among other things, that the rules of NASD be designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest.<sup>23</sup> In addition, the Commission believes that the proposed rule change is consistent with section 7(c)(2)(B) of the Act,<sup>24</sup> which provides, among other things, that the margin requirements for security futures must preserve the financial integrity of markets trading security futures, prevent systemic risk, be consistent with the margin requirements for comparable exchange-traded options, and provide that the margin levels for security futures may be no lower than the lowest level of margin, exclusive of premium, required for any comparable exchange-traded option.

The Commission believes that the rule change is generally consistent with the customer margin rules for security futures adopted by the Commission and the CFTC. In particular, the Commission notes that, consistent with rule 403 under the Act, the rule change provides for a minimum margin level of 20% of current market value for all positions in security futures carried in a securities account. The Commission believes that 20% is the minimum margin level necessary to satisfy the requirements of section 7(c)(2)(B) of the Act. Rule 403 under the Act<sup>25</sup> also provides that a national securities association may set margin levels lower than 20% of the current market value of the security future for an offsetting position involving security futures and related positions, provided that an association's margin levels for offsetting positions meet the criteria set forth in section 7(c)(2)(B) of the Act. The offsets proposed by NASD are consistent with the strategy-based offsets permitted for comparable offset positions involving exchange-traded options and therefore consistent with section 7(c)(2)(B) of the Act.

<sup>22</sup> *Id.*

<sup>23</sup> In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>24</sup> 15 U.S.C. 78g(c)(2)(B).

<sup>25</sup> 17 CFR 240.403(b)(2).

In addition, the Commission believes it is consistent with the Act for NASD to exclude from its margin requirements positions in SFCs carried in a futures account. The Commission believes that by choosing to exclude such positions from the scope of rule 2520, NASD's proposal will make compliance by members with the regulatory requirements of several SROs easier. Moreover, as proposed, NASD members will accord "good faith" margin treatment to specified offsetting positions involving security futures, carried in a securities account for an SFD, consistent with the customer margin rules for security futures adopted by the Commission and the CFTC.

After careful consideration of the commenter's concern about applying NASD's day trading margin requirements to SFCs, the Commission believes that it is reasonable for NASD to impose day trading margin requirements on its members with respect to SFCs carried in a securities account. As NASD noted, an SRO may adopt more stringent requirements than those promulgated by the Commission.

The Commission has also carefully considered the commenter's concern of using the term "bona fide" with respect to market maker or specialist transactions. The Commission notes that NASD has deleted the term "bona fide" in reference to market maker or specialist transactions, and instead is incorporating the definition of an SFD in rule 400(c)(2)(v) under the Act. The Commission believes that if it finds, in approving an SRO's rules for SFDs, that such rules are consistent with the definition of SFD in rule 400(c)(2)(v), those rules would also be consistent with NASD rule 2520 (f)(11)(D). Therefore, the Commission believes this amendment should address the commenter's concerns that NASD not impose a higher standard on transactions by market maker and specialist registered pursuant to rules of another SRO to qualify for favorable margin treatment.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposed rule change should enable NASD members to continue to trade SFCs in securities accounts on an uninterrupted basis. In addition, the Commission believes that granting accelerated approval to the proposed rule change should clarify NASD members' obligations under NASD rule 2520 with respect to their

trading in SFCs. The Commission notes it approved NASD's original filing as a temporary pilot to give members of the public an opportunity to comment on the substance of the proposed rule change before it requests permanent approval. The NASD has responded to the comments received, as described above. Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act, to approve the proposed rule change prior to the thirtieth day after publication of the notice of filing.

## V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>26</sup> that the proposed rule change (File No. SR-NASD-2003-45) be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>27</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-7311 Filed 3-26-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47558; File No. SR-NASD-2003-36]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to NASD Rule 2340

March 21, 2003.

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> notice is hereby given that on March 12, 2003, the National Association of Securities Dealers, Inc. ("NASD") 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 NASD. Pursuant to Section 19(b)(3)(A)(i) of the Act,<sup>3</sup> and Rule 19b-4(f)(1) thereunder,<sup>4</sup> NASD has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, 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 2340 to eliminate outdated and unnecessary references to Rule 15c3-1 under the Act. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

\* \* \* \* \*

#### 2200. Transactions with Customers

\* \* \* \* \*

#### 2340. Customer Account Statements

- (a) through (b) No change.
- (c) Definitions

For purposes of this Rule, the following terms will have the stated meanings:

- (1) No change.
- (2) a "general securities member"

refers to any member [which] *that* conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEC Rule 15c3-1(a)[, except for paragraphs (a)(2) and (a)(3)]. Notwithstanding the foregoing definition, a member [which] *that* does not carry customer accounts and does not hold customer funds [and] *or* securities is exempt from the provisions of this section.

- (3) through (5) No change.
- (d) 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, 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

NASD represents that the proposed rule change would eliminate from NASD Rule 2340 outdated and

unnecessary references to Rule 15c3-1 under the Act. NASD Rule 2340 requires that a general securities member send quarterly account statements to customers. Rule 2340(c)(2) defines a general securities member as "any member which conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEC Rule 15c3-1(a), except for paragraphs (a)(2) and (a)(3)." NASD represents that when the SEC amended Rule 15c3-1 to change the net capital requirements of certain broker-dealers, the SEC also moved, with some minor modifications, many of the provisions that were in paragraphs (a)(2) and (a)(3) into new Rule 15c3-1(a)(2)(iv), (v), and (vi) under the Act.<sup>5</sup>

NASD represents that, besides being obsolete, the references to old paragraphs (a)(2) and (3) are unnecessary in light of the broader exemption that already exists in NASD Rule 2340(c)(2). Specifically, the second sentence of NASD Rule 2340(c)(2) excludes from the definition of a general securities member any member that "does not carry customer accounts and does not hold customer funds and securities." Because the broker-dealers described in old paragraphs (a)(2) and (a)(3) of Rule 15c3-1 do not carry customer accounts or hold customer funds or securities, NASD represents that the exemption in NASD Rule 2340(c)(2) automatically excludes them from the definition of general securities member.

NASD represents that it is not proposing new references to the amended provisions of Rule 15c3-1 under the Act because the broker-dealers described in these provisions also do not carry customer accounts or hold customer funds or securities, and therefore, are excluded from the definition of general securities member by the exemption currently provided in NASD Rule 2340(c)(2). In addition, NASD represents that deleting such

<sup>5</sup> Specifically, old paragraph (a)(2) described introducing broker-dealers that do not carry customers' accounts, but that occasionally receive customer funds and securities. Old paragraph (a)(2) has been replaced by Rule 15c3-1(a)(2)(iv), which describes broker-dealers that introduce customer accounts and that also receive, but do not hold, customer funds or securities and Rule 15c3-1(a)(2)(vi), which describes broker-dealers that introduce customer accounts but do not receive or hold customer funds or securities or carry customer accounts. Old paragraph (a)(3) described broker-dealers that engage solely in the sale of redeemable shares of registered investment companies and certain other share accounts. These broker-dealers also do not hold customer funds or securities. This category is now described in Rule 15c3-1(a)(2)(v). As a result of these changes, the references to Rule 15c3-1 in NASD Rule 2340 no longer refer to the sections that were intended when NASD Rule 2340 was adopted.

<sup>26</sup> 15 U.S.C. 78s(b)(2).

<sup>27</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> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>4</sup> 17 CFR 240.19b-4(f)(1).