would be $6.25 per day (25% of $25 per day) for the first 90 days, and $12.50 per day (25% of $50 per day) thereafter.

Under these general guidelines, the total penalty for any violation would not exceed $100 times the number of plan participants. In the above example, because the plan has 25 participants, the total penalty would not exceed $2,500.

The PBGC may assess a penalty larger than the general penalty if there is a willful failure to comply (e.g., where a plan administrator willfully fails to issue a notice to participants required under section 4011 of ERISA) or if there is a pattern or practice of failure to provide material information. Similarly, the PBGC may assess a penalty larger than the general penalty if the harm to participants or the PBGC resulting from a failure to timely provide material information is substantial. For example, a larger penalty may apply where there is a failure to provide the PBGC with timely post-event notice of a reportable event involving a large company or plan or with annual information required by section 4010 of ERISA.

The PBGC will generally assess the full $1,000 per day penalty for failure to provide an advance notice of a reportable event under ERISA section 4043(b) or a notice to the PBGC of a missed contribution under ERISA section 302(f)(4). This information is so time sensitive and significant that a larger penalty is warranted.

Reasonable Cause Guidelines

The PBGC will waive all or part of a section 4071 penalty where reasonable cause is shown. The PBGC will evaluate each request for a waiver to determine whether the responsible person exercised ordinary business care and prudence and delay resulted from circumstances beyond that person's control.

Other Matters

The PBGC will continue to review initial penalty assessments if requested in writing within 30 days of the date of the notice of initial penalty assessment. Assignment of penalty assessment and review functions remains unchanged.

Issued in Washington, DC, this 12th day of July 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–17629 Filed 7–17–95; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35956; File No. SR–NASD–95–16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendment of the NASD Rules of Fair Practice Relating to a Customer Complaint Reporting Rule

July 11, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 6, 1995,[1] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The NASD is proposing to amend the NASD Rules of Fair Practice to require NASD members to report to the NASD the occurrence of certain specified events and quarterly summary statistics concerning customer complaints. Below is the text of the proposed rule change. Proposed new language is italicized and deleted language is bracketed.

Rules of Fair Practice

Article III

Reporting Requirements

Section

(a) Each member shall promptly report to the Association whenever such member or person associated with the member:

(1) has been found to have violated any provision of any securities law or regulation, any rule or standards of conduct of any governmental agency, self-regulatory organization, or financial business or professional organization, or engaged in conduct which is inconsistent with just and equitable principles of trade; and the member knows or should have known that any of the aforementioned events have occurred;

(2) is the subject of any written customer complaint involving allegations of theft or misappropriation of funds or securities or of forgery;

(3) is named as a defendant or respondent in any proceeding brought by a regulatory or self-regulatory body alleging the violation of any provision of the Securities Exchange Act of 1934, or of any other federal or state securities, insurance, or commodities statute, or of any rule or regulation thereunder, or of any provision of the By-laws, rules or similar governing instruments of any securities, insurance or commodities regulatory or self-regulatory organization;

(4) is denied registration or is expelled, enjoined, directed to cease and desist, suspended or otherwise disciplined by any securities, insurance or commodities industry regulatory or self-regulatory organization or is denied membership or continued membership in any such self-regulatory organization; or is barred from becoming associated with any member of any such self-regulatory organization;

(5) is indicted, or convicted of, or pleads guilty to, or pleads no contest to, any criminal offense (other than traffic violations);

(6) is a director, controlling stockholder, partner, officer or sole proprietor of, or an associated person with, a broker, dealer, investment company, investment advisor, underwriter or insurance company which was suspended, expelled or had its registration denied or revoked by any agency, jurisdiction or organization or is associated in such a capacity with a bank, trust company or other financial institution which was convicted of or pleaded no contest to, any felony or misdemeanor;

(7) is a defendant or respondent in any securities or commodities-related civil litigation or arbitration which has been disposed of by judgement, award, or settlement for an amount exceeding $15,000. However, when the member is the defendant or respondent, then the reporting to the Association shall be required only when such judgement, award, or settlement is for an amount exceeding $25,000;

(8) is the subject of any claim for damages by a customer, broker, or dealer which is settled for an amount exceeding $15,000. However, when the claim for damages is against a member, then the reporting to the Association shall be required only when such claim

[1] The proposed rule change was initially submitted on May 1, 1995, but was amended twice prior to publication of this Notice; once on May 25, 1995, and again on July 6, 1995. The first amendment was a technical amendment intended to clarify the scope of the rule change. The second amendment added a time frame within which members would be responsible to report certain information. Both amendments are incorporated herein and are available for copying in the Commission's Public Reference Room.

is settled for an amount exceeding $25,000;

(9) is associated in any business or financial activity with any person who is subject to a ''statutory disqualification'' as that term is defined in the Securities Exchange Act of 1934, and the member knows or should have known of the association. The report shall include the name of the person subject to the statutory disqualification and details concerning the disqualification;

(10) is the subject of any disciplinary action taken by the member against any person associated with the member involving suspension, termination, the withholding of commissions or imposition of fines in excess of $2,500, or otherwise disciplined in any manner which would have significant limitation on the individual's activities on a temporary or permanent basis.

(b) Each person associated with a member shall promptly report to the member the existence of any of the conditions set forth in paragraph (a) of this rule. Each member shall report to the Association not later than 10 business days after the member knows or should have known of the existence of any of the conditions set forth in paragraph (a) of this rule.

(c) Each member shall report to the Association statistical and summary information regarding customer complaints in such detail as the Association shall specify by the 15th day of the month following the calendar quarter in which customer complaints are received by the member. For the purposes of this paragraph, ''customer'' includes any person other than a broker or dealer with whom the member has engaged, or has sought to engage, in securities activities, and ''complaint'' includes any written grievance by a customer involving the member or person associated with a member.

(d) Nothing contained in paragraphs (a), (b) and (c) of this rule shall eliminate, reduce, or otherwise abrogate the responsibilities of a member or person associated with a member to promptly file with full disclosure, required amendments to Form BD, Forms U–4 and U–5, or other required filings, and to respond to the Association with respect to any customer complaint, examination, or inquiry.

(e) Any member subject to substantially similar reporting requirements of another self-regulatory organization of which it is a member is exempt from the provisions of this rule.

* * * * *

Schedule C

Part V

[Disciplinary Actions]

[Every member shall promptly notify the Corporation in writing of any disciplinary action, including the basis therefor, taken by any national securities exchange or association, clearing corporation, commodity futures market or government regulatory body against itself or its associated persons, and shall similarly notify the Corporation of any disciplinary action taken by the member itself against any of its associated persons involving suspension, termination, the withholding of commissions or imposition of fines in excess of $2,500, or any other significant limitation on activities.]

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 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. The 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

The purpose of the proposed rule change is to adopt an enabling rule which requires NASD members to report certain information on a timely basis to the NASD so that the NASD can more aggressively detect and investigate sales practice violations.

In furtherance of the NASD's varied initiatives to address sales practice abuses and supervisory concerns, the NASD is proposing an amendment to Article III of the Rules of Fair Practice (Rules) to require members to report to the NASD the occurrence of specified events and quarterly summary statistics concerning customer complaints. The proposed rule would provide important new regulatory information that will assist the NASD in the timely identification of problem members, branch offices, and registered representatives in order to more aggressively detect and investigate sales practice violations. If adopted, the proposed rule would significantly parallel comparable provisions of existing Rule 351 of the New York Stock Exchange (NYSE).

The NASD is concerned that critical material information identified in the proposed rule, such as reports on statutory disqualifications, internal disciplinary actions, and quarterly statistical data regarding customer complaints received by a member is not now required by Form U–4 or other forms to be reported to the NASD. As such, this information is not available to the NASD staff on a routine, systematic, or timely basis. In this regard, the NASD believes that the affirmative obligation of members to provide the NASD with notice of certain events concerning member firms or their associated persons will significantly enhance the NASD's ability to quickly identify problem representatives and appropriately respond in a timely manner.

The SEC supported the NASD adoption of a customer complaint reporting rule similar to NYSE Rule 351 in its Large Firm Project Report issued in conjunction with a cooperative effort involving the NASD, SEC, and NYSE that examined the hiring and retention practices of nine of the largest broker-dealers in the United States. Similarly, the General Accounting Office (GAO) in its report titled Securities Markets: Actions Needed to Better Protect Investors Against Unscrupulous Brokers, recommended that member firms' customer complaint information be computer captured and utilized as an additional tool by regulators for identifying potentially problem firms.

As proposed, Subsection (a) of the rule requires member firms to file a report with the NASD when any of 10 different specified events occurs. These 10 events vary significantly, ranging from situations where a court, government agency, or self-regulatory organization (SRO) has determined there has been a violation of the securities laws, to circumstances where a firm has received a written customer complaint alleging theft or misappropriation of funds or securities, or forgery. Subsection (b) of the proposed rule requires each person associated with an NASD member to properly report to the member the existence of any of the 10 conditions set forth in Subsection (a) of the proposed rule. Subsection (b) also requires members to report to the NASD the existence of any of the conditions set forth in Subsection (a) not later than 10 business days after the member knows or should have known of the existence of such conditions.

Subsection (c) of the rule further requires members to report to the NASD statistical and summary information regarding written customer complaints received by the member firm or relating to the firm or any of its associated persons. Importantly, Subsection (e) of the proposed rule eliminates the possibility of unnecessary regulatory duplication by providing an exemption from filing with the NASD for members already subject to similar reporting requirements of another SRO. NYSE Rule 351 is the only such rule in place at this time.

Currently, Part V of Schedule C to the NASD By-Laws requires members to promptly notify the NASD in writing of any disciplinary action that the member takes against any of its associated persons involving suspension, termination, the withholding of commissions, or imposition of fines in excess of $2,500, or any other significant limitation on activities. As this existing disclosure requirement is incorporated into the proposed rule in Subsection (a)(10), the NASD is proposing to rescind this part of Schedule C with the adoption of the new rule.

Members will file the information required by this rule through the same data entry mechanism that is used for the electronic filing of FOCUS reports. The NASD will distribute to the members the software which will allow the members to file this information electronically.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act in that the proposed new Rule of Fair Practice will improve the NASD's ability to detect and investigate sales practice violations. Pursuant to this statutory obligations, the NASD has proposed this rule change in order to establish a reporting mechanism for certain specified events which will enhance the NASD's regulatory efforts.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The 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, as amended.

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

The Association received 25 letters commenting on Notice to Members 94–95 (''the Notice''), the proposed amendment to the Rules of Fair Practice. Below is a summary of the more significant and/or recurring issues raised in the letters and the NASD's position in connection with the same.

The NASD published Notice to Members 94–95 on December 15, 1994. The Notice requested member comment on a new Rule of Fair Practice which would require NASD members to report to the NASD the occurrence of certain specified events and quarterly summary statistics concerning customer complaints.

Twenty-five comment letters have been received. Twenty-four of these are from NASD member firms or associations representing certain industry segments; e.g., the Securities Industry Association. One letter was received from a former registered person. Eight responses were against the rule proposal with comment, fifteen responses were in general agreement with the concept of the proposal, but with suggested modifications, and one letter supported the proposal. The remaining response requested a continuance to comment.

Overview of Comments

I. Form U–4 Reporting and the CRD System

The common general criticism was that the proposed rule is somewhat duplicative of current reporting to the CRD through Form U–4. Also, a majority of commenters questioned the manner in which the required information would be collected and reported to the NASD. Similar comments were also made that the proposal is premature in view of the other ongoing initiatives involving the CRD redesign. As a result, some commenters suggest that this rule proposal be postponed until such time as the CRD redesign project is completed.

Additionally, one commenter suggested that it seems overburdensome for members to provide another reporting channel for customer complaints under the proposed rule. Another commenter was concerned that the proposed rule would create a parallel database of the disciplinary history of registered representatives separate and distinct from the CRD system. Another commenter suggested that quarterly statistical information be reported through CRD.

II. Filing Format and Content

Several commenters observed that the proposed rule fails to disclose actual information to be filed by the member, to whom at the NASD, and in what form. Further, several commenters asked how the information should be transmitted to the NASD.

III. Separate Reporting Obligations on Members and Registered Persons

Several commenters noted that the proposed rule had separate reporting obligations for the member and the registered person. A number of commenters requested clarification on the member's obligation to independently determine the existence of any of the cited provisions regarding their registered persons, especially where the registered person may be the only known source of this information. As a result, one commenter suggested that the rule proposal should be modified to require disclosure of reported events upon ''obtaining knowledge'' and not the ''occurrence'' of the event.

IV. Public Versus Non-Public Availability of the Information

Several commenters were confused as to whether the information submitted to the NASD would immediately, or at some future date, be provided to the public. As a result consistent with their understanding of the NYSE Rule 351 information, commenters suggested that the information remain confidential.

V. Breadth and Scope of the Proposed Rule

Some commenters were concerned by the scope of the proposed rule and opined that the requested information goes beyond the state regulatory purposes.

Specific Comments

The following specific comments will highlight the comments with respect to the various provisions of the proposed rule.

Section (a)(1)

Several commenters stated that this section is overly broad by requiring reporting by any violation of ''rules or standards of conduct'' of any governmental entity, SRO, or business or professional organization. According to commenters, this would include violations of rules and regulations that have no relationship to securities activities or financial businesses. In this regard, one commenter suggested that the proposed provision should be revised to state that it only pertains to misconduct related to the financial services industry.

Section (a)(2)

Most commenters on this provision were concerned that the proposed rule required the reporting of ''allegations'' of misconduct. A general view was that requiring a report based only on allegations, without permitting some

initial evaluation or finding of reasonable cause, may lead to reports that are based on false information. This allegedly could result in damage to the reputation of members and associated persons who are innocent of wrongdoing. Therefore, commenters suggested that members be given an opportunity to screen customer complaints for veracity before filing, or to permit the filing of later reports to correct previously reported information after a member investigation.

Section (a)(3)

Four comments were made on this provision. Two commenters suggested that the reporting of prospective legal action may lend underserved credibility to the accusations and may be prejudicial. In addition, one commenter stated that the proposal does not distinguish between minor and major violations and ventures into areas that are not within the jurisdiction of the NASD (i.e., insurance regulations, bank and trust company regulations).

Lastly, one commenter suggested that the definition of ''proceedings'' be defined and suggested adopting portions of the definition found on Form BD dealing with civil proceedings. The basis for the comment was to account for the differences among the various administrative procedures and regulatory processes of the 50 states, their agencies, and federal agencies and SROs.

Section (a)(4)

Three commenters on this provision suggested that the member should not have to report these matters to a second database when the information is already reported through the CRD system. Another commenter requested clarification of whether an action had to reach a final order or adjudication before reporting to the NASD.

Section (a)(5)

The majority of commenters to this section suggested that the proposed provision be revised to narrow the nature and range of offenses to securities related activities and determine a level of progression beyond arrest and arraignment before reporting to the NASD. In addition, several commenters suggested that current reporting under CRD system through Form U–4, question 22, is sufficient and was designed to obtain information that has a direct bearing on an individual's fitness to be employed in the securities industry.

Section (a)(6)

Five commenters submitted comments on this provision. Two commenters suggested modifications to the proposed rule to restrict the provision's application to persons with a ''control relationship'' with the entity (i.e., director, controlling shareholder, partner, officer or sole proprietor). According to the commenters, it is reasonable to attribute some responsibility to the person if he or she is in a control or principal relationship with the entity, not if the person is solely ''associated'' with the entity. Another commenter suggested that, unless the registered person notified the member of its activities, it would be difficult to comply with this provision.

Sections (a)(7) and (a)(8)

The commenters suggested that this provision required clarification for a number of specific fact situations. One commenter suggested that the reporting thresholds are too low for both the individual and the firm in today's litigious society and inflationary times, but did not provide any suggestions for alternate amounts.

Section (a)(9)

Several commenters suggested that this proposed provision is too broad and does not support its stated purpose. Comments included the difficulty for registered persons and firms to make the required determination of whether a person is ''subject'' to a statutory disqualification. According to the commenters, a registered person may enter into a business relationship with an individual without knowledge that the person committed a felony, not involving securities or investments, within the past ten years.

Other commenters suggested that the proposed provision should be modified to require reporting when a member or registered person ''knows or learns'' of the relationship with a statutorily disqualified person.

Two commenters suggested that it will be difficult for the member to comply without actual knowledge conveyed to them from the registered persons. One commenter suggested that the proposed provision is inconsistent with the intent to obtain information for the timely identification of problem broker-dealers and registered persons, in that, the information requested involved *de minimis* securities activities, non-securities business relationships, and similar situations.

One commenter mentioned the proposed provision be expanded to include the requirement to report detail about the associated person's relationship with the statutorily disqualified person, such as, the nature of their business relationship.

Response to Comments

The most significant concerns of the commenters focused on (1) duplicative reporting; (2) public availability of the data to be reported; (3) the reporting of unresolved customer complaints; (4) the reporting protocol; (5) member obligations to ensure that their associated persons disclose reportable events to them; (6) the reporting of a broad array of violations; and (7) reporting arrests.

Duplicative Reporting

Many commenters did not recognize that existing reporting obligations, particularly through Form U–4, do not cover some of the most crucial information contained in the proposal. For example, Form U–4 does not and will not collect data on statutory disqualifications, internal disciplinary actions, or quarterly statistical data on customer complaints. Also, Form U–4 information is presently collected through the CRD system for registration and licensing purposes. That data is not available to the NASD staff on a routine, systematic, or timely basis for regulatory purposes and will not be available in the foreseeable future. On the other hand, the proposed rule is designed to separately collect data on a timely basis to substantially enhance regulatory initiatives relating to the detection of sales practice violations through the early identification of problem registered representatives. Significantly, the proposed rule squarely responds to SEC and GAO report recommendations. Those reports strongly urge the NASD to adopt a rule similar to NYSE Rule 351 for the purpose of enhancing sales practice initiatives and identifying problem registered representatives through the analysis of customer complaint patterns and other relevant information. Also responsive to concerns regarding duplicative reporting is the provision of the proposed rule which exempts members that have substantially similar reporting requirements to another SRO (i.e.: the NYSE under Rule 351). Further, upon implementation of the redesigned CRD which will provide more ready access to registration information, the NASD will undertake to review the proposed reporting rule to determine whether certain of the duplicative requirements may be eliminated. To the degree that such modifications are feasible, the NASD would intend to delete such provisions from the proposed rule.

Public Availability of Data

A number of commenters clearly interpreted the proposed rule as permitting public disclosure of the information to be reported. However, the NASD collected data will not be made available to the public. The data will be used solely for regulatory purposes, an approach fully consistent with NYSE practices under Rule 351. This would not be the case if, as one commenter suggested, CRD was used to collect and store the customer complaint and other information. CRD data is generally available to the public by state regulators pursuant to disclosure statues. For this reason, it is imperative that a separate and private regulatory database be developed to collect and store the information.

Customer Complaint Reporting

The proposed rule is designed to act as an early warning system for potential sales practice problems engaged in by identified registered representatives. To achieve this result, the information collected will be analyzed for, among other things, patterns of customer complaints involving member firms and registered persons, whether or not all of the complaints are ultimately substantiated. This data represents a core feature of the new rule. As highlighted in the SEC's Large Firm Project Report, identical data obtained through NYSE Rule 351 was a key component in developing the Large Firm Project's special examination list. Similar customer complaint data was also used extensively to focus the new, ongoing joint regulatory problem representative sweep. In this regard, the regulatory priorities relating to the collection of written customer complaint data outweighs concerns about reporting customer allegations of misconduct. Again, commenters are likely to be comforted on this issue once they fully recognize that unsubstantiated customer complaints will be solely used for regulatory purposes and not be made available to the public.

Reporting Protocol

Concerns regarding the mechanics of the proposed rule will be addressed in subsequent Notices to Members. The staff has developed the specifications for electronic reporting that will facilitate the ease of data transmission by members and data collection by the NASD. The system specifications and the reporting protocol will be fully reported to the members via the Notice to Members and appropriate software will be provided.

Member Responsibility to Ensure Associated Person Disclosure

Commenters expressed concern about a member's obligation to ensure compliance with the proposed rule where an associated person fails to disclose to the member the occurrence of an event specified in subsection (a)(9). A resolution surfaced in the comments by the suggestion that the rule proposal be modified to require member reporting under subsection (a)(9) only if the member obtains knowledge of the reportable event. Extending this concept to ensure that members do not intentionally avoid becoming aware of a reportable event, it was suggested that proposed subsection (a)(9) be modified to obligate member reporting under this item only if the member ''knows or should have known'' of the existence of the reportable event.

Violation Reporting

Several commenters indicated that subsection (a)(1) information was too broad and should require reporting only after a finding of violation is made. Adopting this standard would add certainty to the proposed reporting obligation and clarify that members are not expected to launch independent inquiries to determine, for example, whether an associated person violated a provision of a business or professional organization. As a result, it was suggested that the rule proposal be modified to include language that a ''finding of violation'' is necessary before an occurrence needs to be reported under subsection (a)(1).

Arrest Reporting

Comments arose under proposed subsection (a)(5) that included the reporting of arrests. Analysis of this issue indicates that the NASD may not have the authority to gain access to arrest records of an individual. Similarly, ''arraignment'' carries a different meaning among states and is not consistently an indication that a person has been charged with a crime. For these reasons, it was suggested that the proposal be modified to delete the term ''arrest'' and ''arraignment'' from the text.

With regard to some of the specific comments raised, the NASD Board has amended the proposed rule in the following areas: (1) filings required pursuant to subsection (a)(1) are to be made only when there is a finding of violations; (2) ''arrest'' and ''arraignment'' are deleted from subsection (a)(5); and (3) filings required under subsection (a)(9) are to be made only where the member knows or should have known of the information to be reported.

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

Within 35 days of the publication of this Notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–95–16 and should be submitted by August 8, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–17582 Filed 7–17–95; 8:45 am]

BILLING CODE 8010–01–M

[2] 17 CFR 200.30–3(a)(12).