SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49055; File No. SR–NASD–2003–131]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Relating to Proposed Amendments to NASD's Telemarketing Rules to Require Members To Participate in the National Do-Not-Call Registry

January 12, 2004.

I. Introduction

On August, 18, 2003, the National Association of Securities Dealers, Inc. (''NASD''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the NASD's adoption of telemarketing rules to require its members to participate in the national do-not-call registry. The proposed rule change was published for comment in the **Federal Register** on August 27, 2003.[3] On December 18, 2003, the NASD submitted Amendment No. 1 to the proposed rule change.[4]

The Commission received five comment letters on the proposed rule change.[5] The text of proposed Amendment No. 1 is below. Additions from the original filing are in *italics*; deletions are in [brackets].

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2200. Communications With the Public

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221[1]*2*. Telemarketing

(a)–(f) (No Change).

(g) Definitions

(1) Established business relationship

(A) An established business relationship exists between a member and a person if:

(i) the person has made a financial transaction *or has a security position, a money balance, or account activity* with the member or *at a clearing firm that provides clearing services to such member* within the previous 18 months immediately preceding the date of the telemarketing call; [or]

(ii) *the member is the broker/dealer of record for an account of the person within the previous 18 months immediately preceding the date of the telemarketing call; or;*

[(ii)]*(iii)* the person has contacted the member to inquire about a product or service offered by the member within the previous three months immediately preceding the date of the telemarketing call.

(B) A person's established business relationship with a member does not extend to the member's affiliated entities unless the person would reasonably expect them to be included. Similarly, a person's established business relationship with a member's affiliate does not extend to the member unless the person would reasonably expect the member to be included.

(2)–(3) (No Change).

(4) the term ''account activity'' shall include, but not be limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the member.

(5) the term ''broker/dealer of record'' refers to the broker/dealer identified on a customer's account application for accounts held directly at a mutual fund or variable insurance product issuer.

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II. Description

A. General

The Federal Trade Commission (''FTC'') and the Federal Communications Commission (''FCC'') established requirements for sellers and telemarketers to participate in a national do-not-call registry.[6] Since June 2003, consumers have been able to enter their home and mobile telephone numbers into the national do-not-call registry, which is maintained by the FTC. Under rules of the FTC and FCC, sellers and telemarketers generally are prohibited from making telephone solicitations to consumers whose numbers are listed in the national do-not-call registry.

On July 2, 2003, the SEC requested that the NASD amend its telemarketing rules to include a requirement for its members to participate in the national do-not-call registry.[7] Because broker/dealers and banks are subject to the FCC's jurisdiction, the NASD modeled its rules after the FCC, specifically tailoring the rules to broker/dealers and the securities industry.[8]

The NASD submitted a proposed rule change to amend NASD Rule 2211,[9] to implement rules that prohibit its members from making telemarketing calls to people who have registered on the FTC's national do-not-call registry.[10] The proposal retains the requirement that members make their a telemarketing calls only during certain times of day (8 a.m. to 9 p.m. local time at the called party's location) and a restriction against making calls to persons who have requested to be on a firm-specific do-not-call list.[11]

B. Exceptions

The NASD currently provides its members with an ''existing customer'' exception to its requirement that members make their a telemarketing calls only during certain times of day (8 a.m. to 9 p.m. local time at the called party's location) and to its requirement that members provide certain information about the caller during the course of the telephone conversation.[12] The proposed rule change would replace the ''existing customer'' exception with an ''established business relationship'' exception, a ''prior

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission published the proposed rule changes filed by the NASD and the MSRB simultaneously. *See* Securities Exchange Act Release Nos. 48390 (August 22, 2003), 68 FR 51613 (August 27, 2003) (SR–NASD–2003–131); 48389 (August 22, 2003), 68 FR 51609 (August 27, 2003) (SR–MSRB–2003–07).

[4] *See* letter from Brian J. Woldow, Attorney, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 17, 2003 (''Amendment No. 1'').

[5] *See* letters from Ted F. Angus, V.P. and Senior Corporate Counsel for Retail Brokerage, Charles Schwab, to Mr. Jonathan G. Katz, Secretary, Commission, dated September 17, 2003, (''Schwab Letter''); James Y. Chin, A.V.P., Director and Counsel, State Government Affairs & Staff Advisor to the State Telemarketing Subcommittee, Securities Industry Association, to Mr. Jonathan G. Katz, Secretary, Commission, dated September 17, 2003, (''SIA Letter''); Carl B. Wilkerson, Chief Counsel, Securities & Litigation, American Council of Life Insurers, to Jonathan G. Katz, Secretary, Commission, dated September 17, 2003, (''ACLI Letter''); Kevin S. Thompson, V.P., Deputy General Counsel, CUNA Mutual Group, to Jonathan G. Katz, Secretary, Commission, dated September 23, 2003, (''CUNA Letter''); Richard M. Whiting, Executive Director and General Counsel, The Financial Services Roundtable, to Mr. Jonathan G. Katz, Secretary, Commission, dated September 25, 2003, (''FSR Letter'').

[6] Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 (''TCPA''), FCC 03–153, adopted June 26, 2003.

[7] The Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994 requires the Commission to promulgate telemarketing rules substantially similar to those of the FTC or direct self-regulatory organizations to do so, unless the Commission determines that such rules are not in the interest of investor protection. 15 U.S.C. 6102(d) (2003).

[8] *See* The Do-Not-Call Implementation Act, 108 Pub. L. 10, 117 Stat. 557 (Mar. 11, 2003).

[9] The Commission notes that, in Amendment No. 1, the NASD changed the numbering of NASD Rule 2211 to NASD Rule 2212. Accordingly, unless otherwise specified, this notice generally references proposed NASD Rule 2212, as amended.

[10] *See* proposed NASD Rule 2212(a)(3).

[11] *See* proposed NASD Rule 2212(a)(1)&(2).

[12] *See* NASD Rule 2211(c)&(d).

express invitation or permission'' exception and a ''personal relationship exception.''[13]

As originally proposed, the established business relationship exception would have enabled NASD members to make a telephone solicitation as long as the call's recipient had made a financial transaction with the member within 18 months preceding the date of the telemarketing call, or if the recipient had contacted the member to inquire about a product or service offered by the member within the three months preceding the date of the telemarketing call.[14] The proposed established business relationship exception would not provide an exception for those individuals who have requested to be put on a member's firm-specific do-not-call list or from the time-of-day restrictions.

The second exception to the national do-not-call rules pertains to those persons from whom the member has obtained prior express written invitation or permission to make a telemarketing call.[15] The final exception pertains to those persons with whom an associated person of a member has a ''personal relationship.''[16]

C. Telemarketing Procedures

The NASD also proposed that its members must institute certain procedures related to do-not-call lists. As proposed, these procedures must include requirements to: have a written policy for maintaining a do-not-call list, train personnel engaged in telemarketing in the existence and use of the do-not-call list, record and disclose requests from a person to be added to the member's do-not-call list, and have the member provide the called party with the name of the individual caller, the name of the member, a telephone number or address at which the member may be contacted, and that the purpose of the call is to solicit the purchase of securities or related services.[17] The proposed rules clarify that, absent a specific request, a person's do-not-call request would apply to the member making a call, but not an affiliated entity of such a member unless the person would expect such an affiliated entity to be included, given the identification of the caller and the product being advertised.[18] Further, the NASD proposed that members must maintain a record of a caller's request to receive no further telemarketing calls and must honor that request for a period of five years.[19]

D. Safe Harbor

In addition to proposing certain baseline procedures that members must follow, the NASD proposed a ''safe harbor'' under which a member would not be liable for calling a person on the national do-not-call registry if that call is the result of an error and if the telemarketer's routine business practice meets certain specified standards.[20] In order to benefit from this safe harbor the member must establish and implement written procedures to comply with the national do-not-call rules, train its personnel in those procedures, maintain a list of telephone numbers that the member may not contact, and use a process to prevent telephone solicitations to any telephone number that appears on any national do-not-call registry, including a version of the list obtained from the administrator.

E. Miscellaneous

The NASD proposed that the applicability of the telemarketing and telephone solicitation restrictions and exceptions would extend to wireless telephone subscribers.[21] Further, the NASD proposed that if a member uses another entity to perform telemarketing services on its behalf, the member remains responsible for ensuring compliance with all provisions contained in proposed NASD Rule 2212.[22]

III. Summary of Comments

The commission received five comment letters addressing the proposed rule change.[23] All five letters expressed concerns with the NASD's proposed amendments to NASD Rule 2212.

A. Established Business Relationship

In general, the five commenters believe that the proposed rule change, as proposed in the original filing, would restrict the ability of member firms to contact their existing customers.[24] The commenters' primary concern relates to the NASD's proposed definition of an ''established business relationship'' exception.[25] The commenters generally stated the NASD's proposed version of the established business relationship exception, which is created when a customer has ''effected a securities transaction or deposited funds or securities with the member'' is too limited in scope and appears inconsistent with the TCPA and FCC Rules.

The established business relationship exclusion, under the FCC's amendment to the TCPA, provides that formation of an existing relationship involves a voluntary two-way communication ''with or without an exchange of consideration.''[26] By limiting the scope of the established business relationship exclusion, the commenters believe that the proposed rule change restricts opportunities for both broker-dealers and customers and may preclude member firms from fulfilling their account monitoring responsibilities.[27]

In addition, commenters expressed concerns that changing the interpretation from a customer that ''carries an account'' to requiring a ''financial transaction'' within the previous eighteen months imposes difficult compliance issues, increases confusion, and generally restricts the ability of broker-dealers to contact their customers. These commenters believe the change undermines the broker-client relationship. In addition, some commenters claimed that narrowing the scope of existing customers for the established business relationship exception would force broker-dealers to implement costly system changes that distinguish among their account holders.[28] As a whole, the commenters assert that the NASD is setting forth a new concept that was not included in the FCC Rules under the amended TCPA.[29]

All five commenters believe that the NASD's definition of an established business relationship is too narrow and omits various situations under which a broker/dealer may need to contact its customers.[30] For example, one commenter believes that the definition of established business relationship does not properly accommodate the interests of broker/dealers distributing variable life insurance and variable annuities.[31] The same commenter states that variable life insurance and annuity contracts are long term accumulation

[13] *See* proposed NASD Rule 2212(b).

[14] *See* original proposed NASD Rule 2211(g)(1)(A).

[15] *See* proposed NASD Rule 2212(b)(2).

[16] *See* proposed NASD Rule 2212(b)(3).

[17] *See* proposed NASD Rule 2212(d)(1)–(d)(4).

[18] *See* proposed NASD Rule 2212(d)(5).

[19] *See* proposed NASD Rule 2212(d)(6).

[20] *See* proposed NASD Rule 2212(c).

[21] *See* proposed NASD Rule 2212(e).

[22] *See* proposed NASD Rule 2212(f).

[23] *See supra* note 5.

[24] *See* ACLI Letter, at 3–4; Charles Schwab Letter, at 4; CUNA Letter, at 2; FSR Letter, at 2–3; SIA Letter, at 4.

[25] *Id.*

[26] 47 CFR 64.1200(f)(3).

[27] *See* FSR Letter, at 2.

[28] FSR Letter at 4; Schwab Letter, at 5; SIA Letter, at 2.

[29] *See* Schwab Letter; SIA Letter; ACLI Letter; CUNA Letter; FSR Letter.

[30] *See* ACLI Letter, at 3–4; Schwab Letter, at 4; CUNA Letter, at 2; FSR Letter, at 2–3; and SIA Letter, at 4.

[31] ACLI Letter, at 2–4.

products necessitating long-term business relationships with customers.[32] Three commenters state that the proposed definition of an established business relationship is significantly narrower than the NASD's definition of existing customer, which is used for NASD's existing telemarketing rules and the FCC's and FTC's definition of established business relationship.[33] Two commenters also believe that an established business relationship generally should exist when a customer is an account holder at a member firm.[34] Charles Schwab states that the proposed rule should permit a member to win back a customer's account.[35]

The commenters request a review of the proposal with consideration of the wide array of business activities of all member firms. One commenter stated that the statutory 21-day comment period was insufficient to address the issues raised by this proposed rule change.[36] Most commenters urged the NASD to revise the proposed rule change by expanding the definition of ''established business relationship'' to accommodate an effective means for member firms to deliver products and services to customers.[37]

B. Networking Agreements

One commenter stated that the proposed definition of established business relationship does not properly provide for networking relationships between different entities.[38] That commenter believes that if a person maintains an account at a bank, the person should be viewed as having an established business relationship with that bank's networking broker/dealer.

C. The Prior Express Written Consent Exception

As described above, NASD's proposed rule contains an exemption from the do-not-call provisions if a consumer has provided consent in writing to be called by the firm.[39] One commenter believes that NASD's rule is inconsistent with the FTC and FCC rules in that it requires ''written'' consent.[40]

IV. Amendment No. 1

A. Established Business Relationship

In its letter included within Amendment No. 1, NASD noted that proposed NASD Rule 2212 would restrict only ''telephone solicitations,'' which would be defined as ''the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.'' Accordingly, under the original proposed definition, the NASD interpreted a telephone call to a customer concerning a margin call or similar administrative event would not constitute a telephone solicitation.

In response to commenters' concerns about the narrow scope of the established business relationship exception, the NASD stated that a member may, at times, be compelled to contact a customer to satisfy the member's attendant agency obligations, including situations where market swings, interest rate changes, new tax laws, or specific industry or company news may necessitate a broker contacting his or her customer.

In addition, the NASD proposed two changes to the definition of an ''established business relationship.'' The first change to the definition would encompass situations where the person has a security position, a money balance, or account activity at a clearing firm on behalf of such member within the previous 18 months. The second change to the definition would include situations where a member was the ''broker/dealer of record'' for an account of a person within the 18 months immediately preceding the date of the telemarketing call. Both definitions of established business relationship continue for 18 months after a triggering event, thus providing an opportunity for a firm to win back a customer.

Moreover, the NASD noted that the proposed rule change cannot assure members that compliance with the proposed NASD Rule 2212 ensures compliance with FCC rules because members also must comply with the telemarketing rules of the FCC and any FCC interpretations of those rules.

B. Networking Agreements

In response to one commenter's concerns with respect to networking agreements, the NASD stated that it did not agree with the commenter's view on the scope of a member's established business relationship with banks' networking broker/dealer. The NASD stated that it believed that the FCC and FTC rules concerning ''related parties'' were clear in that a person's established business relationship with a member does not extend to the member's affiliated entities unless the person would reasonably expect them to be included. The NASD stated that it similarly designed its established business relationship exception to not extend to the member unless the person receiving the call would reasonably expect the member to be included as a related party. The NASD stated that it does believe that a networking arrangement, which is formed by contract and that also may be terminated by a bank under such contract, meets the threshold intended by the FCC and FTC rules. In addition, it stated that it does not believe that a customer of the bank that has not made a financial transaction with a broker/dealer would reasonably expect to be contacted by such broker/dealer.

C. Prior Express Written Consent Exception

In response to one commenter's concern about the need for the prior express consent to be in writing, the NASD stated that it interpreted the FCC and FTC rules to require prior written consent in order for an exception to the prohibition against calling the registrants on the national do-not-call registry to apply. The NASD noted that the FCC rule states that a person or entity shall not be held liable for violating the national do-not-call registry prohibition if ''[i]t has obtained the subscriber's prior express invitation or permission. Such permission must be evidenced by a *signed, written agreement* between the consumer and seller which states that the consumer agrees to be contacted by this seller and includes the telephone number to which the calls may be placed.''[41] The NASD stated that the FTC rule also requires prior express written notice.[42] Moreover, the NASD believes the potential for misuse of this exception is

[32] ACLI Letter, at 3.

[33] *See* SIA Letter, at 3–4; Charles Schwab Letter at 2–4; and FSR Letter at 2–3.

[34] *See* SIA Letter at 3; and Schwab Letter at 3.

[35] *See* Schwab Letter, at 5. The FCC has stated, ''a consumer who once had telephone service with a particular carrier or a subscription with a particular newspaper could expect to receive a call from those entities in an effort to 'win back' or 'renew' that consumer's business within eighteen (18) months.'' 68 FR 44144, 44158 (July 25, 2003).

[36] *See* ACLI Letter, at 5.

[37] *See* ACLI Letter, at 5; SIA Letter, at 4; CUNA Letter, at 2; and FSR Letter, at 3.

[38] *See* CUNA Letter at 2.

[39] *See* proposed NASD Rule 2212(b)(2).

[40] *See* FSR Letter at 4–5.

[41] 68 FR 44144, 44177 (July 25, 2003) (codified at 47 CFR 64.1200(c)(2)(*ii*)) (emphasis added).

[42] The FTC rule states that a seller or telemarketer may call a person on the national do-not-call registry if the seller or telemarketer ''has obtained the express agreement, *in writing*, of such person to place calls to that person. Such *written* agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature of that person.'' 68 FR 4580, 4672 (January 29, 2003) (codified at 16 CFR 310.4(b)(iii)(B)(*i*)) (emphasis added).

heightened if it can be based on verbal consent. Based on the foregoing, the NASD declined to amend the prior consent provisions to accommodate verbal requests.

V. Discussion and Commission Findings

After careful review of the proposed rule change and the related comments, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder which govern the NASD[43] and, in particular, the requirements of Section 15A(b)(6) of the Act and the rules and regulations thereunder.[44] Section 15A(b)(6) of the Act requires, among other things, that NASD's rules must 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.

A. General

The Commission believes that the investing public's participation in the do-not-call registry, as described in the proposed rule change, creates an expectation among national do-not-call registrants that they will not receive unwanted telephone solicitations from NASD members. The Commission believes that the NASD's proposal generally prohibits its members from making telemarketing calls to people who have registered on the national do-not-call registry, while retaining time-of-day and firm-specific do-not-call list restrictions.[45] The Commission believes that the proposed rule change, as amended establishes adequate procedures to prevent members from making telephone solicitations to do-not-call registrants which should have the effect of protecting investors, while providing appropriate exception to the rule for certain enumerated situations, which should promote just and equitable principles of trade.

B. Exceptions

The Commission recognizes the importance of having certain exceptions to the general prohibition of NASD members from soliciting persons who have signed up on the FCC's national do-not-call registry. The Commission believes that the ''established business relationship'' exception, ''prior express invitation or permission'' exception, and a ''personal relationship'' exception provide appropriate scenarios where an NASD member should not be precluded from making a telemarketing call to do-not-call registrants.

The Commission further believes that the NASD's expansion of ''established business relationship'' is appropriate. As originally drafted, an established business relationship would exist between the customer and an NASD member as long as the call's recipient had made a financial transaction with the member within 18 months preceding the date of the telemarketing call, or if the recipient had contacted the member to inquire about a product or service offered by the member within the three months preceding the date of the telemarketing call.[46] In response to commenters concerns about the narrowness of the exception, the NASD expanded the definition of ''established business relationship'' to include situations where the telemarketing call recipient has a security position, a money balance, or account activity at a clearing firm on behalf of such member within the previous 18 months, and where a member was the ''broker/dealer of record'' for an account of a person within the 18 months immediately preceding the date of the telemarketing call.

The Commission believes that an NASD member should be able to discuss the purchase or sale of a security with a customer who has registered on the national do-not-call registry without fear of violating an NASD rule when there is some development that could materially impact the investment decision of a reasonable investor. As originally proposed, an established business relationship did not exist unless an account holder had made a financial transaction within the previous eighteen months or affirmatively contacted the member to make an account inquiry within the past three months. The Commission believes that the definition, as originally proposed, would have restricted a member from making a telemarketing call to its customer in many situations where a prudent investor would ordinarily desire to be contacted, such as the existence of market swings, interest rate changes, new tax laws, or specific industry or company news. The Commission believes that the expansion of the definition of ''established business relationship'' exception to include persons that have a security position, money balance or account activity with a member or at a clearing firm that provides clearing services on behalf of a member will, among other things, assist NASD members in upholding their agency obligations to customers. In addition, the Commission believes that broker/dealers of record who have served as such for a customer within the eighteen months preceding the date of the telemarketing call should be allowed to contact a customer whose account is held directly at a mutual fund or variable insurance product issuer.

Moreover, the Commission believes that the proposed established business relationship exception adequately protects customers who are most interested in not being contacted by a member by specifying that the exception does not apply to those individuals who have specifically requested to be put on a member's do-not-call list. The Commission further believes a member should not generally be restricted from contacting those do-not-call registrants from whom the member has received express written consent to contact and those registrants who have a personal relationship with the associated person making the call.

C. Telemarketing Procedures

As described above, the NASD also proposed that its members must institute certain procedures related to do-not-call lists.[47] The Commission believes that the procedures that the NASD has proposed provide adequate guidelines for a member to establish education and training of its affiliated persons and adequately provides that a member will incorporate the names of persons who request to be put on a firm's do-not-call list among the list of names that a member may not contact. Further, the Commission believes that the identification procedure that a member or associated person must follow when making a telemarketing call should enhance the ability of consumers to hold members and associated persons accountable for adhering to firm-specific and national do-not-call registry restrictions.

D. Safe Harbor

As described above, the NASD proposed ''safe harbor'' procedures that a member could follow to avoid liability for do-not-call list violations that arise out of errors if the telemarketer's routine business practice meets certain specified standards.[48] The Commission believes that the safe harbor that the NASD has proposed should ensure that a member incorporates national do-not-call registrants in its own list of telephone numbers that it may not

[43] Additionally, in approving this rule the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[44] 15 U.S.C. 78o–3(b)(6).

[45] *See* proposed NASD Rule 2212(a)(1) and (2).

[46] *See* original proposed NASD Rule 2211(g)(1)(A).

[47] *See* proposed NASD Rule 2212(d)(1)–(d)(6).

[48] *See* proposed NASD Rule 2212(c).

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

E. Miscellaneous

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

F. Accelerated Approval of Amendment No. 1

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

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NASD–2003–131. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–131 and should be submitted by February 10, 2004.

VII. Conclusion

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

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

Margaret H. McFarland,

Deputy Secretary.

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[49] *See* ACLI Letter, at 3–4; Schwab Letter, at 4; CUNA Letter, at 2; FSR Letter, at 2–3; SIA Letter, at 4.

[50] *Id.*

[51] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

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

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

January 12, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on December 30, 2003, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by NASD. NASD has designated the proposed rule change as ''non-controversial'' under Section 19(b)(3)(A) of the Act[3] and Rule 19b-4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

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

* * * * *

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

(a) and (b) No change.

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

* * * * *

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

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The proposed rule change would correct a typographical error in NASD

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b-4(f)(6).