of Section 15A(b)(6) of the Act,[11] which requires, among other things, that the 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. NASD believes that expediting the appointment of arbitrators under the proposed waiver, at the request of customers, associated persons with claims against industry parties, member firms with claims against other member firms, or member firms with claims against associated persons that relate exclusively to promissory notes, will allow those parties to exercise their contractual rights to proceed in arbitration in California, notwithstanding the conflict between the disputed California Standards and the NASD rules.

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

The NASD does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the Act.

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

Written comments were neither solicited nor received.

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

NASD has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. NASD provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

Pursuant to Rule 19b–4(f)(6)(iii) under the Act,[14] the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the self-regulatory organization must file notice of its intent to file the proposed rule change at least five business days beforehand. NASD has requested that the Commission waive the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.[15]

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[16] Accelerating the operative date will merely extend a pilot program that is designed to provide investors, and associated persons with claims against industry respondents, with a mechanism to resolve their disputes. During the period of this extension, the Commission and NASD will continue to monitor the status of the previously discussed litigation. For these reasons, the Commission designates the proposed rule change as effective and operative on September 30, 2004.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–126 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–126. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–126 and should be submitted on or before October 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

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[11] 15 U.S.C. 78*o*–3(b)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] Telephone Conversation between John Nachmann, Counsel, NASD Dispute Resolution, Inc. and Elizabeth MacDonald, Attorney Adviser, Division of Market Regulation, September 23, 2004

[16] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50446; File No. SR–NASD–2004–121]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. To Include Failures to Timely Submit Amendments to Form U5 in its Minor Rule Violation Plan

September 24, 2004.

I. Introduction

On August 11, 2004, the National Association of Securities Dealers, Inc. (''NASD''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange

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

[2] 17 CFR 240.19b–4.

Commission (''Commission'' or ''SEC'') a proposed rule change to amend NASD Interpretative Material 9216 (''IM–9216'') (Violations Appropriate for Disposition Under the Plan Pursuant to SEC Rule 19d–1(c)(2)). NASD amended the proposal on August 17, 2004,[3] and August 19, 2004.[4] The proposed rule change, including Amendment Nos. 1 and 2, was published for notice and comment in the **Federal Register** on August 25, 2004.[5] The Commission received one comment on the proposal.[6] This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

NASD proposes to amend IM–9216 to expand the list of violations eligible for disposition under NASD's Minor Rule Violation Plan (''MRVP'') to include failure to timely submit amendments to Form U5, as required by Article V, Section 3(a) of the NASD By-Laws. The proposed rule change also changes references of ''U–4'' to ''U4,'' to be consistent with the most recent amendments to that form.

NASD represents that the inclusion of the failure to timely submit amendments to Form U5 would be consistent with the current MRVP, which includes failure to timely submit amendments to Form U4, as required by Article V, Section 2(c) of the NASD By-Laws, and failure to timely submit amendments to Form BD, as required by Article IV, Section 1(c) of the NASD By-Laws. In addition, NASD believes that the addition of this violation to the MRVP would provide NASD staff with the ability to impose a meaningful sanction for violations that warrant more than a Letter of Caution but do not necessarily rise to a level meriting a full disciplinary proceeding.

III. Comment Received

The Commission received one comment on the proposal. The commenter, while supportive of NASD's efforts to regulate behavior that is contrary to the best interest of the investing public, questioned whether additional rules and more severe sanctions deter individuals with dishonest motives. The commenter also argued that increasing the severity of sanctions for minor or technical violations places additional undue burdens on many practitioners, and warned against increases in the level of fines.

NASD responded[7] that the proposed rule change would not create any additional requirements on the securities industry. Further, NASD responded that the addition of this violation to the MRVP would not place additional undue burdens on the industry; rather, the addition would provide NASD staff with the ability to impose a meaningful sanction (currently limited to a maximum of $2,500) on a member for failing to timely file an amendment to a Form U5 that warrants more than a Letter of Caution but less than a more expensive and time-consuming formal disciplinary proceeding.

IV. Discussion

After careful review of the proposed rule change, the comment letter, and NASD's response to comment letter, 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.[8] Specifically, the Commission believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[9] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. Further, the Commission believes that the proposed rule change is consistent with Section 15A(b)(7) of the Act[10] in that it provides for the appropriate discipline for violation of Commission rules and NASD rules. Moreover, the Commission believes the proposed rule change is consistent with Section 15A(b)(8) of the Act[11] in that it provides a fair procedure for the disciplining of NASD members and associated persons. Finally, the Commission finds that the proposed rule change is consistent with Rule 19d–1(c)(2) under the Act,[12] which governs minor rule violation plans. The Commission believes it is reasonable for NASD to be able to sanction late filings of Form U5 amendments pursuant to its MRVP. The Commission does not believe that the comment submitted raises any issue that would preclude approval of this proposal.

In approving the proposed rule change, the Commission in no way minimizes the importance of compliance with NASD rules, and all other NASD rules subject to the imposition of fines under the MRVP. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide NASD with greater flexibility in addressing certain violations of NASD rules, the MRVP provides a reasonable means to address violations that do not rise to the level of requiring formal NASD disciplinary proceedings. The Commission expects that NASD will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of NASD rules under the MRVP, on a case by case basis, or if a violation requires formal disciplinary action.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NASD–2004–121) and Amendment Nos. 1 and 2 are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

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[3] *See* letter from Shirley H. Weiss, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated August 16, 2004 (''Amendment No. 1''). In Amendment No. 1, NASD alphabetically rearranged the contents of Exhibit 3 to the proposed rule change. Exhibit 3 included comment letters NASD received from its members with respect to the proposed rule change.

[4] *See* letter from Shirley H. Weiss, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated August 19, 2004 (''Amendment No. 2''). In Amendment No. 2, NASD made technical corrections to accurately reflect the existing text of IM–9216.

[5] *See* Securities Exchange Act Release No. 50221 (August 19, 2004), 69 FR 52317.

[6] *See* letter from Colon Brown, Jr., President, Brown & Brown Securities, Inc., dated September 9, 2004.

[7] *See* letter from Shirley H. Weiss, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated September 22, 2004.

[8] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78o–3(b)(7).

[11] 15 U.S.C. 78o–3(b)(8).

[12] 17 CFR 240.19d–1(c)(2).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).