Exchange's performance evaluation and allocations procedures in order to make them readily available in one accessible location. Performance evaluation is the process by which the Exchange reviews Floor member conduct and takes remedial action where necessary to improve performance. The registration of specialists (''allocations'') is the process by which the Exchange matches appropriate specialists to particular securities.

Proposed Rule 26 describes the composition of the Performance Committee, and allows the Performance Committee to delegate some or all its responsibilities to one or more subcommittees consisting of six persons. Proposed Rule 26 also describes the responsibilities of the Performance Committee with respect to specialists, registered traders, and brokers, including remedial actions available to the Performance Committee with respect to each group of Floor members.

Proposed Rule 27 describes the composition and responsibilities of the Options and Equities Allocations Committees. In addition, the Exchange represents that the Special Allocations Committee allocates securities that are not allocated by the Options or Equities Allocations Committees and securities with special characteristics as may be determined by the Chief Executive Officer of the Exchange or his or her designee.

II. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposal, as amended, is consistent with section 6(b)(5) of the Act,[9] which requires, among other things, that the Exchange's procedures are 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.

The Commission believes that codifying the Exchange's performance evaluation and allocations procedures should help the Exchange to ensure quality markets by monitoring and encouraging the performance and competition among specialists and other Floor members, thereby protecting investors and the public interest.

III. Amendment No. 4

The Commission finds good cause for approving Amendment No. 4 prior to the thirtieth day after notice of publication in the **Federal Register**. In addition to making minor technical changes to the proposed rule language, Amendment No. 4 (1) clarifies that the Adjudicatory Council shall review the written statements and supporting documents submitted by the appellant and Committee in connection with the appeal; (2) specifies in the proposed rule text that the specialist will receive written notice or notice will be posted on one of the Exchange's Web sites of allocation decisions by the Allocations Committee; and (3) decreases the number of days an appellant would have to submit a timely application for review.[10] The Commission finds that Amendment No. 4 to the proposed rule enhances the fairness of Amex procedures for the evaluation of specialists' performance and allocation measures. The Commission believes that it is not necessary to separately solicit comment on Amendment No. 4 before approving this proposal because it received no comments in response to the initial publication of the proposed rule change and Amendment No. 4 makes changes that improve the rule. The Commission therefore finds that the approval of Amendment No. 4 on an accelerated basis is appropriate.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 4, including whether the amendment 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 Amex. All submissions should refer to File No. SR–Amex–2001–19 and should be submitted by February 6, 2002.

V. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the ACt,[11] that the proposed rule change (SR–AMEX–2001–19), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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

[9] 15 U.S.C. 78f(b)(5).

[10] The Amex, however, determined that it would not further amend the proposed rule to require that the Performance Committee maintain a verbatim record of its meetings, although the rule as proposed requires that a verbatim record of Adjudicatory Council proceedings be kept.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–2(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45259; File No. SR–NASD–2002–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Relieve Registered Representatives Serving in the Armed Forces From Continuing Education Requirements

January 9, 2002.

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 January 7, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. NASD Regulation filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(1)[4] thereunder, in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[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)(1).

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

NASD Regulation proposes to amend NASD IM–1000–2 to codify the staff's interpretive position regarding the relief from NASD Rule 1120, Continuing Education Requirements, for securities industry professionals who volunteer or are called into active military duty. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

IM–1000–2. Status of Sole Proprietors and Registered Representatives Serving in the Armed Forces

Any *Registered* [registered] Representative of a member who volunteers or is called into the Armed Forces of the United States shall be placed, after proper notification to the Executive Office, upon inactive status and need not be re-registered by such member upon his *or her* return to active employment with the member.

Any member (Sole Proprietor) who temporarily closes his *or her* business by reason of volunteering or being called into the Armed Forces of the United States, shall be placed, after proper notification to the Executive Office, on inactive status until his *or her* return to active participation in the investment banking and securities business.

A Registered Representative who is placed on inactive status as set forth above shall not be included within the definition of ''Personnel'' for purposes of the dues or assessments as provided in Article VI of the By-Laws.

Any member placed on inactive status as set forth above shall not be required to pay dues or assessments during the pendency of such inactive status and shall not be required to pay an admission fee upon return to active participation in the investment banking and securities business.

A Registered Representative who is placed on inactive status as set forth above shall not be required to complete either of the Regulatory or Firm Elements of the continuing education requirements set forth in Rule 1120 during the pendency of such inactive status.

* * * * *

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 Regulation included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation 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 IM–1000–2 (''the Interpretation'') addresses the registration status of sole proprietors and registered representatives serving in the armed forces. The Interpretation states that securities industry professionals who volunteer or are called into active military duty (''Active Duty Professionals'') will be placed in a specially designated ''inactive'' status once the NASD is notified of their military service, but will remain registered for NASD purposes. While the Interpretation does not address continuing education obligations with respect to Active Duty Professionals, NASD Regulation staff has interpreted Rule 1120 to relieve Active Duty Professionals from continuing education obligations for the period of time that they are on active duty. The proposed rule change codifies the staff's position through amendments to the Interpretation. The Securities Industry/Regulatory Council on Continuing Education (''CE Council'') supports the staff's views.[5]

NASD Regulation has, for the reasons set forth below, relieved Active Duty Professionals from continuing education requirements. Rule 1120(a)(2) provides that ''Unless otherwise determined by the Association, any registered persons who have not completed the Regulatory Element within the prescribed time frames will have their registrations deemed inactive until such time as the requirements of the program have been satisfied.'' A registered person may satisfy his or her Regulatory Element requirement at a Prometric Center in the United States and Canada, or at a VUE Center in Europe and the Pacific Rim. Because it is generally not practical for Active Duty Professionals to be at a facility that delivers the Regulatory Element, NASD Regulation believes that Active Duty Professionals should be relieved from fulfilling the Regulatory Element requirements that arise during the period of time that they are on active duty.

With respect to the Firm Element requirements of continuing education, Rule 1120(b)(1) provides that only persons who have ''direct contact with customers'' in the conduct of securities activities are subject to the Firm Element requirements. Active Duty Professionals are excluded from the Firm Element requirements because they do not have contact with customers. Accordingly, the proposed amendment to the Interpretation expressly states that Active Duty Professionals are not required to complete either of the Regulatory or Firm Elements of the continuing education requirements set forth in Rule 1120 during the pendency of such inactive status.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[6] which requires, among other things, that the Association'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. NASD Regulation believes that codifying the staff's interpretative position to relieve Active Duty Professionals from the NASD's continuing education requirements during the time they are on active duty is consistent with the protection of investors and the public interest.

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

NASD Regulation 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

Written comments were neither solicited nor received.

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

The foregoing proposal has become effective pursuant to section 19(b)(3)(A) of the Act,[7] and Rule 19b–4(f)(1)[8]

[5] The CE Council, of which all of the self-regulatory organizations and 14 industry representatives are members, is responsible for the oversight of the continuing education program as a whole. The SEC and North American Securities Administrators Association also send liaisons to attend CE Council meetings.

[6] 15 U.S.C. 78o–3(b)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(1).

thereunder, in that it constitutes a stated policy, practice, or interpretation with respect to the meeting, administration, or enforcement of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 number SR–NASD–2002–03 and should be submitted by February 6, 2002.[9]

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

Margaret H. McFarland,

Deputy Secretary.

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[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45261; File No. SR–NASD–00–02]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Amending the NASD Code of Arbitration Procedure Rules 10335 and 10205(h) Relating to Injunctive Relief

January 9, 2002.

I. Introduction

On January 13, 2000, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly-owned subsidiary NASD Regulation Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change amending the NASD Code of Arbitration Procedure (''Code'') Rules 10335 and 10205(h) relating to injunctive relief.

NASD Regulation submitted to the Commission Amendment No. 1 to its proposed rule change on March 9, 2000 [3] and Amendment No. 2 on March 25, 2000.[4] On April 27, 2000, the proposed rule change, as amended, was published for comment in the **Federal Register**.[5] The Commission received 13 comment letters on the proposed rule change, as amended by Amendments No. 1 and 2.[6] On December 19, 2000, NASD, through NASD Dispute Resolution Inc. (''NASD Dispute Resolution''), filed Amendment No. 3 and a response to comments [7] and on December 21, 2000, filed a supplemental response to comments.[8] In response to Amendment No. 3 and NASD Supplemental Response, the Commission received two additional comment letters on the proposal.[9] NASD, through NASD Dispute Resolution, filed Amendment No. 4 and Amendment No. 5 on May 17, 2001 and August 10, 2001, respectively.[10] On October 25, 2001, the proposed rule change, as amended by Amendment Nos. 3, 4, and 5, was published for comment in the **Federal Register**.[11] The Commission received one additional comment letter on the amended proposal.[12] As discussed below, this

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Patrice Gliniecki, Vice President and Deputy General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated March 7, 2000 (''Amendment No. 1'').

[4] *See* letter from Patrice Gliniecki, Vice President and Deputy General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated March 24, 2000 (''Amendment No. 2'').

[5] *See* Securities Exchange Act Release No. 42606 (April 3, 2000), 65 FR 18405 (April 7, 2000).

[6] Letter from Alan Foxman, Esq. Chairman, National Association of Investment Professionals, Government and Regulatory Committee, and T. Sheridan O'Keefe, President, National Association of Investment Professionals, to Jonathan G. Katz, Secretary, Commission, dated April 26, 2000 (''Foxman Letter''); letter from Thomas M. Campbell, Smith Campbell & Paduano, to Katherine A. England, Assistant Director, Division, Commission, dated April 27, 2000 (''Campbell Letter''); letter from John W. Shaw and Jeffrey A. Ziesman, Berkowitz, Feldmiller, Stanton, Brandt, Williams & Stueve, LLP, counsel to Sutro & Co. Incorporated, to Secretary, Commission, dated April 28, 2000 (''Sutro Letter''); letter from Dana N. Pescosolido, Law Offices of Saul, Ewing, Weinberg & Green, counsel to Ferris, Baker Watts, Incorporated, Janney Montgomery Scott LLC, Legg Mason Wood Walker, Incorporated, Morgan Keegan & Company, Inc. and Raymond James & Associates, Inc. to Jonathan G. Katz, Secretary, Commission, dated April 28, 2000 (''Pescosolido Letter''); letter from Dan Jamieson, Public Investor, to Jonathan Katz, Secretary, Commission, dated May 1, 2000 (''Jamieson Letter''); e-mail from Joseph G. Kathrein Jr. to Commission, dated May 23, 2000 (''Kathrein E-mail''); letter from Gary R. Irwin, Vice President and Group Counsel, American Express Financial Corporation, American Express Financial Advisors, to Jonathan G. Katz, Secretary, Commission, dated May 25, 2000 (''Irwin Letter''); e-mail from Kosta, to Commission, dated July 10, 2000 (''Kosta E-mail''); e-mail from Michael A. Yoakum, to Commission, dated July 10, 2000 (''Yoakum E-mail''); e-mail from Frank Louis Blair Koucky III to Commission, dated July 11, 2000 (''Koucky E-mail''); e-mail from Gilbert A. Armour, Financial Consultant, Kirlin Securities, to Commission, dated July 11, 2000 (''Armour E-mail''); letter from Bob Chernow, to J. Katz, Secretary, Commission, dated July 10, 2000 (''Chernow Letter''); and letter from Dan Jamieson, to Jonathan Katz, Secretary, Commission, dated January 3, 2001 (''Jamieson Letter 2'').

[7] *See* letter from Laura Leedy Gansler, Counsel, NASD Dispute Resolution, to Katherine A. England, Assistant Director, Division, Commission, dated December 18, 2000 (''Amendment No. 3'').

[8] *See* letter from Laura Leedy Gansler, Counsel, NASD Dispute Resolution, to Katherine A. England, Assistant Director, Division, Commission, dated December 21, 2000 (''NASD Supplemental Response'')

[9] Letter from Dan Jamieson, to Jonathan Katz, Secretary, Commission, dated January 4, 2001 (''Jamieson Letter 3''); and letter from Dana N. Pescosolido, Saul Ewing LLP, to Katherine A. England, Assistant Director, Division, Commission, dated January 20, 2001 (''Pescosolido Letter 2,'' and together with Pescosolido Letter, ''Pescosolido Letters'').

[10] *See* letter from Laura Leedy Gansler, Counsel, NASD Dispute Resolution, to Florence Harmon, Senior Special Counsel, Division, Commission, dated May 17, 2001 (''Amendment No 4''), and letter from Laura Leedy Gansler, Counsel, NASD Dispute Resolution, to Florence Harmon, Senior Special Counsel, Division, Commission, dated August 10, 2001 (''Amendment No. 5'').

[11] *See* Securities Exchange Act Release No. 44950 (October 18, 2001), 66 FR 54041 (October 25, 2001) (''Second Release'').

[12] *See* letter from Dan Jamieson, to Jonathan Katz, Secretary, Commission, dated November 1, 2001 (''Jamieson Letter 4,'' and together with Jamieson Letter, Jamieson Letter 2 and Jamieson Letter 3, ''Jamieson Letters'').