Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: August 6, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20594 Filed 8–12–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 62/Form U–R–1, SEC File No. 270–166, OMB Control No. 3235–0152.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection for information summarized below. The Commission plans to submit this collection of information to the Office of Management and Budget for extension and approval.

Form U–R–1 is filed under Rule 62 (17 CFR 250.62), which implements sections 12(e) and 11(g) of the Public Utility Holding Company Act of 1935 (''Act'') 15 U.S.C. 79 *et seq.* Section 12(e) of the Act (15 U.S.C. 791(e), makes it unlawful to solicit ''any proxy, power of attorney, consent, or authorization regarding any security of a registered holding company or a subsidiary company thereof in contravention of such rules and regulations or orders as the Commission deems necessary.'' Section 11(g) of the Act (15 U.S.C. 79k(g) prohibits, in pertinent part, the solicitation of proxy, consent, authorization, power of attorney, deposit, or dissent in respect of any reorganization plan or any plan under Section 11 for the divestment of control, securities or other assets or for the dissolution of a registered holding company or any subsidiary thereof, unless the plan has been proposed or submitted to the Commission and is not made in contravention of any Commission rule and regulations or order.

Rule 62 prohibits the solicitation of authorization regarding any security of a registered holding company or any of its subsidiaries, in connection with any reorganization subject to Commission approval. Rule 62 also prohibits such solicitation regarding any transaction, which is the subject of an application or declaration filed with the Commission, except with respect to a solicitation, which has become effective pursuant to a declaration filed with the Commission. Every declaration under Rule 62, if in connection with any reorganization, is to be filed on Form U–R–1. Rule 62 exempts from the filing requirements solicitations to not more than 25 owners of securities or claims, and actions taken as a depositary or custodian of securities solicited by order.

Due primarily to subsequent enlargement of the scope of the Securities Exchange Act of 1934 (''34 Act''), the solicitations under the provisions of Rule 62 are now governed, as to both form and substance, by the provisions of the 34 Act. The filings specified by Rule 62 now consist merely of incorporating by reference the company's filing under Section 14 of the 34 Act as an exhibit to the application or declaration under the Act seeking authorization for the transaction to which the solicitation is ancillary. Rule 62 does govern the date of the commencement of the solicitation.

Form U–R–1 and Rule 62 allow the Commission to adequately enforce Sections 12(e) and 11(g) of the Act. Not requiring the information collection would seriously interfere with the Commission's efforts in this regard.

Respondents to the request for information in Form U–R–1 are registered public utility holding companies and their subsidiaries. We estimate the average time to prepare the information required by Form U–R–1 at 5 hours per response based on our informal questioning selected respondents. Since there are approximately 7 respondents who file each year, the total annual respondent reporting burden is 35 hours at $115 per hour.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549.

Dated: August 6, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20595 Filed 8–12–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48298; File No. SR–NASD–2002–162]

Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 1 and 2 to Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Supervisory Control Amendments

August 7, 2003.

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 November 4, 2002, the National Association of Securities Dealers, Inc. (''NASD''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on November 27, 2002.[3] On August 5, 2003, the NASD filed Amendment No. 1 to the proposed rule change.[4] On August 7, 2003, the NASD filed Amendment No. 2 to the proposed rule change.[5] Amendment Nos. 1 and 2 are described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on Amendment Nos. 1 and 2 to the proposed rule change from interested persons.

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46859 (November 20, 2002), 67 FR 70990.

[4] Amendment No. 1 replaces and supercedes the original filing in its entirety.

[5] See letter from Patrice M. Gliniecki, Senior Vice President and Deputy General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated August 7, 2003 (''Amendment No. 2''). In Amendment No. 2, among other things, NASD clarified the term ''heightened supervision'' as the term is used in proposed NASD Rule 3012, and the term ''heightened inspection procedures'' as that term is used in proposed NASD Rule 3010.

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

NASD is proposing to adopt new NASD Rule 3012 and amend other rules regarding the supervisory and supervisory control procedures of member firms. Below is the amended text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

2510. Discretionary Accounts

(a) through (c) No change.

(d) Exceptions

This Rule shall not apply to:

(1) discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a security shall be executed, *except that the authority to exercise time and price discretion will be considered to be in effect only until the end of the business day on which the customer granted such discretion, absent a specific, written contrary indication signed and dated by the customer. This limitation shall not apply to time and price discretion exercised for orders effected with or for an institutional account, as defined in Rule 3110(c)(4), pursuant to valid Good-Till-Cancelled instructions issued on a ''not-held'' basis;*

(2) No Change.

Any exercise of time and price discretion must be reflected on the customer order ticket.

* * * * *

3010. Supervision

(a) Supervisory System

Each member shall establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with *applicable NASD Rules* [the Rules of this Association]. Final responsibility for proper supervision shall rest with the member. A member's supervisory system shall provide, at a minimum, for the following:

(1) through (7) No change.

[(8) Each member shall designate and specifically identify to the Association one or more principals who shall review the supervisory system, procedures, and inspections implemented by the member as required by this Rule and take or recommend to senior management appropriate action reasonably designed to achieve the member's compliance with applicable securities laws and regulations, and with the Rules of this Association.]

(b) No change.

(c) Internal Inspections

(1) Each member shall conduct a review, at least annually, of the businesses in which it engages, which review shall be reasonably designed to assist in detecting and preventing violations of, and achieving compliance with, applicable securities laws and regulations, and with *applicable NASD rules* [the Rules of this Association]. Each member shall review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses [and at least an annual inspection of each office of supervisory jurisdiction].

(A) Each member shall inspect at least annually every office of supervisory jurisdiction and any branch office that supervises one or more non-branch locations. [Each branch office of the member shall be inspected according to a cycle which shall be set forth in the firm's written supervisory and inspection procedures.]

(B) Each member shall inspect at least every three years every branch office that does not supervise one or more non-branch locations. In establishing how often to inspect each non-supervisory branch office [such cycle], the firm shall [give consideration to] *consider whether* the nature and complexity of the securities activities for which the location is responsible, the volume of business done, and the number of associated persons assigned to the location *require the non-supervisory branch office to be inspected more frequently than every three years. The non-supervisory branch office examination cycle and an explanation of the factors the member used in determining the frequency of the examinations in the cycle shall be set forth in the member's written supervisory and inspection procedures.*

(C) Each member shall inspect on a regular periodic schedule every non-branch location. In establishing such schedule, the firm shall consider the nature and complexity of the securities activities for which the location is responsible and the nature and extent of contact with customers. The schedule and an explanation regarding how the member determined the frequency of the examination schedule shall be set forth in the member's written supervisory and inspection procedures.

Each member shall retain a written record of the dates upon which each review and inspection is conducted.

(2) An office inspection and review by a member pursuant to paragraph (c)(1) must be reduced to a written report and kept on file by the member for a minimum of three years, unless the inspection is being conducted pursuant to paragraph (c)(1)(C) and the regular periodic schedule is longer than a three-year cycle, in which case the report must be kept on file at least until the next inspection report has been written. The written inspection report must also include, without limitation, the testing and verification of the member's policies and procedures, including supervisory policies and procedures in the following areas:

(A) Safeguarding of customer funds and securities;

(B) Maintaining books and records;

(C) Supervision of customer accounts serviced by branch office managers;

(D) Transmittal of funds between customers and registered representatives and between customers and third parties;

(E) Validation of customer address changes; and

(F) Validation of changes in customer account information.

(3) An office inspection by a member pursuant to paragraph (c)(1) may not be conducted by the branch office manager or any person within that office who has supervisory responsibilities or by any individual who is supervised by such person(s). A member must have in place procedures that are reasonably designed to provide heightened office inspections if the person conducting the inspection reports to the branch office manager's supervisor or works in an office supervised by the branch manager's supervisor and the branch office manager generates 20% or more of the income of the branch office manager's supervisor. For the purposes of this subsection only, the term ''heightened inspection'' shall mean those inspection procedures that are designed to avoid conflicts of interest that serve to undermine complete and effective inspection because of the economic, commercial, or financial interests that the branch manager's supervisor holds in the associated persons and businesses being inspected.

* * * * *

(g) Definitions

(1) No change.

(2) (*A*) ''Branch Office'' means any location identified by any means to the public or customers as a location at which the member conducts an investment banking or securities business, excluding:

(A) through (D) renumbered as (i) through (iv).

(B) Notwithstanding the exclusions provided in paragraph (2)(A), any location that is responsible for supervising the activities of persons associated with the member at one or more non-branch locations of the member is considered to be a branch office.

(3) No change.

3012. Supervisory Control System

(a) General Requirements

(1) Each member shall designate and specifically identify to NASD one or more principals who shall establish, maintain, and enforce a system of supervisory control policies and procedures that (A) test and verify that the member's supervisory procedures are reasonably designed with respect to the activities of the member and its registered representatives and associated persons, to achieve compliance with applicable securities laws and regulations, and with applicable NASD rules and (B) create additional or amend supervisory procedures where the need is identified by such testing and verification. The designated principal or principals must submit to the member's senior management no less than annually, a report detailing each member's system of supervisory controls, the summary of the test results and significant identified exceptions, and any additional or amended supervisory procedures created in response to the test results.

(2) The establishment, maintenance, and enforcement of written supervisory control policies and procedures pursuant to paragraph (a) shall include:

(A) procedures that are reasonably designed to review and supervise the customer account activity conducted by the member's branch office mangers, sales managers, regional or district sales managers, or any person performing a similar supervisory function. A person who is senior to the producing manager must perform such supervisory reviews. However, if a member does not conduct a public business, or has a capital requirement of $5,000 or less, or employs 10 or fewer representatives, and its business is conducted in a manner necessitated by a limitation of resources that includes fewer than two layers of supervisory personnel, a person in another office who is in the same or similar position to the producing manager may conduct the supervisory reviews, provided that the person in the same or similar position does not have supervisory responsibility over the activity being reviewed, reports to his supervisor his supervision and review of the producing manager, and has not performed a review of the producing manager in the last two years;

(B) procedures that are reasonably designed to review and monitor the following activities:

(i) all transmittals of funds (e.g., wires or checks, etc.) or securities from customers and third party accounts (i.e., a transmittal that would result in a change of beneficial ownership); from customer accounts to outside entities e.g., banks, investment companies, etc.); from customer accounts to locations other than a customer's primary residence (e.g., post office, ''in care of'' accounts, alternate address, etc.); and between customers and registered representatives, including the hand-delivery of checks;

(ii) customer changes of address and the validation of such changes of address; and

(iii) customer changes of investment objectives and the validation of such changes of investment objectives.

The policies and procedures established pursuant to paragraph (a)(2)(B) must include a means or method of customer confirmation, notification, or follow-up that can be documented; and

(C) procedures that are reasonably designed to provide heightened supervision over the activities of each producing manager who is responsible for generating 20% or more of the income of the producing manager's supervisor. For the purposes of this subsection only, the term ''heightened supervision'' shall mean those supervisory procedures that evidence supervisory activities that are designed to avoid conflicts of interest that serve to undermine complete and effective supervision because of the economic, commercial, or financial interests that the supervisor holds in the associated persons and businesses being supervised.

(b) Dual Member

Any member in compliance with substantially similar requirements of the New York Stock Exchange, Inc. shall be deemed to be in compliance with the provisions of this Rule.

* * * * *

3110. Books and Records

(a) through (b) No change.

(c) Customer Account Information

(1) through (3) No change.

(4) For purposes of this Rule [and], *and Rule 2510* the term ''institutional account'' shall mean the account of:

(A) through (C) No change.

(d) Changes in Account Name or Designation

Before any customer order is executed, there must be placed upon the memorandum for each transaction, the name or designation of the account (or accounts) for which such order is to be executed. No change in such account name(s) (including related accounts) or designation(s) (including error accounts) shall be made unless the change has been authorized by a member or a person(s) designated under the provisions of NASD rules. Such person must, prior to giving his or her approval of the account designation change, be personally informed of the essential facts relative thereto and indicate his or her approval of such change in writing on the order or other similar record of the member. The essential facts relied upon by the person approving the change must be documented in writing and preserved for a period of not less than three years, the first two years in an easily accessible place, as the term ''easily accessible place'' is used in SEC Rule 17a–4.

For purposes of this paragraph (d), a person(s) designated under the provisions of NASD rules to approve account name or designation changes must pass a qualifying principal examination appropriate to the business of the firm.

* * * * *

IM–3110. Customer Account Information

(a) through (h) No Change.

(i) Holding of Customer Mail

Upon the written instructions of a customer, a member may hold mail for a customer who will not be at his or her usual address for the period of his or her absence, but (A) not to exceed two months if the member is advised that such customer will be on vacation or traveling or (B) not to exceed three months if the customer is going abroad.

* * * * *

9610. Application

(a) Where To File

A member seeking an exemption from Rule 1021, 1022, 1070, 2210, 2320, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860, Interpretive Material 2860–1, 3010(b)(2), 3020, 3210, 3230, 3350, 8211, 8212, 8213, 11870, or 11900, Interpretive Material 2110–1, or Municipal Securities Rulemaking Board Rule G–37 shall file a written application with the appropriate department or staff of *NASD* [the Association] and provide a copy of the

application to the Office of General Counsel of NASD [Regulation].

(b) through (c) No Change.

* * * * *

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

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the original 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

a. *Background.* On November 4, 2002, NASD filed with the Commission proposed rule change SR–NASD–2002–162. The rule change proposed new NASD Rule 3012 to require members to develop general and specific supervisory control procedures that independently test and verify and modify, where necessary, the members' supervisory procedures. In addition, the rule change proposed amendments to: (1) NASD Rule 3010(c) to require that office inspections be conducted by independent persons and include, at a minimum, the testing and verification of certain supervisory procedures;[6] (2) NASD Rule 3110 to expand upon a members' supervisory and recordkeeping requirements with respect to changes in customer account name or designation in connection with order executions; (3) NASD IM–3110 to provide guidance regarding when a member may hold mail for a customer who will be absent for a period of time; (4) NASD Rule 2510(d) to clarify the time limit on time-and-price discretionary authority; and (5) NASD Rule 9610 to incorporate into NASD Procedural Rules the ability of members to request an exemption from amended NASD Rule 3010(c).

The Commission received 72 comment letters in response to the **Federal Register** publication of SR–NASD–2002–162.[7] The comments submitted to the Commission are summarized and responded to by issue below. Additional proposed rule changes are also discussed below.

b. *General Comments on the Rule Change.* Many commenters stated that the effective enforcement of existing supervisory rules should be sufficient to protect investors.[8] These commenters frequently added that they viewed the proposed rules as an overreaction to the Gruttadauria case, which involved a producing branch manager who misappropriated millions of dollars in customer funds over a 15-year period. The commenters stated that the Gruttadauria case was not a result of inadequate supervisory systems but, instead, was a case of a single individual intent on defrauding customers.[9]

While NASD understands industry concerns that regulators not overreact to one case of violative conduct, NASD does not view the proposed rule change as a reaction to any particular legal or regulatory event. Rather, NASD believes that the proposed rule change is designed to enhance the current rules and examination efforts by specifically requiring members to establish adequate supervisory control systems. NASD also believes that the proposed rule change will strengthen its ability to fulfill its ongoing obligation to protect investors.

A majority of the commenters also suggested that implementing the proposed rule change would require firms to hire a large number of additional personnel to conduct the supervisory activities required by the proposed rules, thereby placing a significant financial burden on firms.[10] Many commenters believed that this cost would destroy the business model of independent contractors located in

[6] NASD has filed with the Commission a separate proposed rule change to Rule 3010(g)(2) that addresses other situations where a location of a member may be considered a ''branch office'' and affects only the content of what is now being renumbered as paragraph (2)(A) of Rule 3010(g). *See* SR–NASD–2003–104. If the SEC approves the proposed rule change in No. SR–NASD–2003–104 prior to approving the rule change proposed in this filing, NASD will file an amendment to this proposal updating the rule language in the new Rule 3010(g)(2). Alternatively, if the SEC approves the proposed rule change in this rule filing prior to approving the proposed rule change in SR–NASD–2003–104, NASD will file an amendment to SR–NASD–2003–104 reflecting the changes set forth in this filing.

[7] List of comment letters has been prepared as Exhibit 2. Exhibit 2 is available in the Commission's Public Reference Room.

[8] 1st Global, Inc., Stephen Batman, CEO (12/18/02); AIG Advisor Group, Inc., Bridget M. Gaughan, EVP (12/30/02); Cambridge Investment Research, Inc., Terry L. Lister, General Counsel (12/20/02); Charles Schwab & Co., Inc., Selwyn J. Noteliovitz, SVP (2/25/03); Clark/Bardes Financial Services, Inc., Kevin Ballou, President (3/17/03); Commonwealth Financial Network, Peter T. Wheeler, President (12/17/02); CUNA Brokerage Services, Inc., Marcia L. Martin, President (12/19/02); FFP Securities, Inc., Craig A. Junkins, President/CEO (12/18/02); First Allied Securities, Inc., Adam Antoniades, President/COO (12/18/02); Invest Financial Corporation, Lynn R. Niedermeier, President/CEO (12/17/02); Investment Centers of America, Inc., Greg Gunderson, President (12/16/02); Lesko Securities, Inc., Charles Lesko, Jr., President (12/18/02); Mutual Service Corp., Dennis S. Kaminski, EVP/CAO (12/18/02); MWA Financial Services, Robert M. Roth, President (12/18/02); Princor Financial Services Corp., Minoo Spellerberg, Compliance Officer (12/16/02); Rhodes Securities, Inc., Sandra T. Masek, EVP/COO (12/17/02); Securities America, Inc., Bryan R. Hill, President (12/16/02); Securities Industry Association, Self-Regulation and Supervisory Practices Group, Christopher R. Franke, Chairman—Self-Regulation and Supervisory Practices Committee (12/18/02); Transamerica Financial Advisors, Inc., Sandy Brown, President/COO (12/16/02); United Planners' Financial Services of America, Thomas H. Oliver, President, CEO, (12/13/02); USAllianz Securities, Inc., Michael D. Burns, CCO (12/16/02); Waterstone Financial Group, Inc., Thomas A. Hopkins, Chairman, (12/16/02); World Group Securities, Inc., Leesa M. Easley, Chief Legal Officer (12/19/02).

[9] *Id.; see also* Associated Securities Corp., Neal K. Nakagiri, President/CEO (12/19/02); AXA Advisors, John M. Lefferts, President (12/18/02); Cadaret, Grant & Co., Arthur F. Grant, President (12/17/02); Commonwealth Financial Network, Peter T. Wheeler, President (12/17/02); Equity Services, Inc., Gregory D. Teese, VP (12/18/02); Linsco/Private Ledger, Corp., James F. McGuire, SVP & CCO (1/16/03); National Society of Compliance Professionals, Inc., Joan Hinchman, Executive Director, President & CEO (1/8/03); Pacific Select Distributors, Inc., John L. Dixon, President (12/18/02).

[10] 1st Global, Inc., Stephen Batman, CEO (12/18/02); AIG Advisor Group, Inc., Bridget M. Gaughan, EVP (12/30/02); American Express Financial Advisors, Inc., Beth E. Weimer, VP & CCO (1/17/03); Cambridge Investment Research, Inc., Terry L. Lister, General Counsel (12/20/02); Clark/Bardes Financial Services, Inc., Kevin Ballou, President (3/17/03); CUNA Brokerage Services, Inc., Marcia L. Martin, President (12/19/02); Equity Services, Inc., Gregory D. Teese, VP (12/18/02); FFP Securities, Inc., Craig A. Junkins, President/CEO (12/18/02); Financial Network Investment Corp., Jack R. Handy, Jr., President (12/13/02); First Allied Securities, Inc., Adam Antoniades, President/COO (12/18/02); IFG Network Securities, Inc., R. Jack Conley, President/CEO (12/18/02); Invest Financial Corporation, Lynn R. Niedermeier, President/CEO (12/17/02); Investment Centers of America, Inc., Greg Gunderson, President (12/16/02); John Hancock Financial Services, Inc., Robert H. Watts, SVP/CCO, (12/17/02) & Another Letter (1/16/03) (additional comments); Lesko Securities, Inc., Charles Lesko, Jr., President (12/18/02); Linsco/Private Ledger, Corp., James F. McGuire, SVP & CCO (1/16/03); Locust Street Securities, Inc., Jacqueline C. Conley, VP, Compliance (12/13/02); Multi-Financial Securities Corp., Patrick H. McEvoy, President/CEO (12/16/02); Mutual Service Corp., Dennis S. Kaminski, EVP/CAO (12/18/02); MWA Financial Services, Robert M. Roth, President (12/18/02); PrimeVest Financial Services, Inc., Kevin P. Maas, VP, (No Date on Letter); Princor Financial Services Corp., Minoo Spellerberg, Compliance Officer (12/16/02); Rhodes Securities, Inc., Sandra T. Masek, EVP/COO (12/17/02); Securities America, Inc., Bryan R. Hill, President (12/16/02); Transamerica Financial Advisors, Inc., Sandy Brown, President/COO (12/16/02); United Planners' Financial Services of America, CEO (12/13/02); USAllianz Securities, Inc., Michael D. Burns, CCO (12/16/02); Vestax Securities Corp., R. Jack Conley, President/CEO (12/17/02); Washington Square Securities, Inc., Tom K. Rippberger, VP/CCO (No Date on Letter); Waterstone Financial Group, Inc., Thomas A. Hopkins, Chairman, (12/16/02).

small branch offices.[11] One commenter suggested that the proposed rule change be adopted in the form of ''principles for effective supervision'' or ''best practices'' that could be tailored to various business models rather than rules that would apply to all firms.[12]

NASD does not agree that the proposed rule change should be adopted in the form of ''principles or best practices.'' NASD believes that the degree of authority carried by the proposed rules is necessary to encourage the conduct intended by the rule changes. However, as discussed in detail below, NASD agrees that greater flexibility is needed in certain respects to account for variations in members' business models.

i. *Comments on Proposed NASD Rule 3012 (Supervisory Controls) and Proposed Changes.* As originally proposed, NASD Rule 3012 requires that each member establish supervisory control procedures that (a) test and verify that the member's supervisory procedures are reasonably designed to comply with the federal securities laws and regulations and NASD rules and (b) amend the supervisory procedures where testing and verification identifies the need to do so. NASD Rule 3012 also requires that the supervisory control procedures be performed by persons who are ''independent'' from those activities being tested and verified and the persons who directly supervise those activities.

In addition, NASD Rule 3012 requires that written policies and procedures to administer the supervisory controls specifically address transmittals of funds between accounts, changes of customers' addresses, and changes in customers' investment objectives. These designated policies and procedures must include a means or method of customer confirmation, notification, or follow-up that can be documented.

Many commenters requested clarification regarding who would be sufficiently ''independent'' to perform the supervisory control procedures required under proposed NASD Rule 3012.[13] A large number of commenters contended that restricting senior supervisory personnel from performing and/or overseeing the review of a firm's supervisory control procedures could compromise the quality of the review. The commenters stated that the alternative approach of assigning someone from another division of the firm, such as Marketing or Operations, to perform the review could result in a supervisory review that is less sensitive to compliance requirements.[14] At least one commenter stated that the ''independence'' requirement in NASD Rule 3012 appears to refer to someone outside of the firm.[15]

NASD agrees with commenters' concerns and is amending proposed NYSE Rule 3012 to eliminate the requirement that persons establishing, maintaining, and enforcing supervisory control policies and procedures be ''independent.'' The proposed rule now will require that a member designate and specifically identify to NASD one or more principals who will establish, maintain, and enforce supervisory control procedures that will test and verify that the members' supervisory procedures are sufficient and create additional or amend supervisory procedures where the need is identified by such testing and verification. Of course, NASD expects that the designated principals will test and verify the adequacy of the supervisory control procedures in a manner that is independent of a member's countervailing business considerations.

Importantly, as stated in proposed NYSE Rule 3012, these policies and procedures must include procedures that are reasonably designed to review and supervise the customer account activity conducted by the member's branch office managers, sales managers,

[11] Associated Securities Corp., Neal K. Nakagiri, President/CEO (12/19/02); AXA Advisors, John M. Lefferts, President (12/18/02); Mutual Service Corp., Dennis S. Kaminski, EVP/CAO (12/18/02); Pacific Select Distributors, Inc., John L. Dixon, President (12/18/02); Securities Industry Association, Self-Regulation and Supervisory Practices Group, Christopher R. Franke, Chairman—Self-Regulation and Supervisory Practices Committee (12/18/02); Woodbury Financial Services, Inc., Michael G. Brennan, Associate Counsel/Assistant Secretary (12/18/02).

[12] 1st Global, Inc., Stephen Batman, CEO (12/18/02); Securities Industry Association, Self-Regulation and Supervisory Practices Group, Christopher R. Franke, Chairman—Self-Regulation and Supervisory Practices Committee (12/18/02).

[13] 1st Global, Inc., Stephen Batman, CEO (12/18/02); AIG Advisor Group, Inc., Bridget M. Gaughan, EVP (12/30/02); Cambridge Investment Research, Inc., Terry L. Lister, General Counsel (12/20/02); Charles Schwab & Co., Inc., Selwyn J. Noteliovitz, SVP (2/25/03); Clark/Bardes Financial Services, Inc., Kevin Ballou, President (3/17/03); Commonwealth Financial Network, Peter T. Wheeler, President (12/17/02); CUNA Brokerage Services, Inc., Marcia L. Martin, President (12/19/02); FFP Securities, Inc., Craig A. Junkins, President/CEO (12/18/02); First Allied Securities, Inc., Adam Antoniades, President/COO (12/18/02); Invest Financial Corporation, Lynn R. Niedermeier, President/CEO (12/17/02); Investment Centers of America, Inc., Greg Gunderson, President (12/16/02); Lesko Securities, Inc., Charles Lesko, Jr., President (12/18/02); Midland National Life Insurance, P.M. Phalen, Assistant Vice President (12/17/02); MML Investors Services, Inc., Michael L. Kerley, VP/Chief Legal Officer (12/17/02); Mutual Service Corp., Dennis S. Kaminski, EVP/CAO (12/18/02); MWA Financial Services, Robert M. Roth, President (12/18/02); Princor Financial Services Corp., Minoo Spellerberg, Compliance Officer (12/16/02); Rhodes Securities, Inc., Sandra T. Masek, EVP/COO (12/17/02); Securities America, Inc., Bryan R. Hill, President (12/16/02); Securities Industry Association, Self-Regulation and Supervisory Practices Group, Christopher R. Franke, Chairman ''Self-Regulation and Supervisory Practices Committee (12/18/02); United Planners'' Financial Services of America, President, CEO (12/13/02); USAllianz Securities, Inc., Michael D. Burns, CCO (12/16/02); Waterstone Financial Group, Inc., Thomas A. Hopkins, Chairman, (12/16/02); World Group Securities, Inc., Leesa M. Easley, Chief Legal Officer (12/19/02).

[14] 21st Century Financial Services, Inc., Charles Mazziotti, President (12/17/02); AIG Advisor Group, Inc., Bridget M. Gaughan, EVP (12/30/02); Brookstreet Securities Corporation, Stanley C. Brooks, President, CEO (12/4/02); Cambridge Investment Research, Inc., Terry L. Lister, General Counsel (12/20/02); CUNA Brokerage Services, Inc., Marcia L. Martin, President (12/19/02); Duerr Financial Corporation, William Partin, President (11/27/02); Eagle One Investments, LLC, Steven J. Svoboda, President (12/16/02); Financial Network Investment Corp., Jack R. Handy, Jr., President (12/13/02); Financial Northeastern Companies, Dominick Del Duca, CCO (12/12/02); First Allied Securities, Inc., Adam Antoniades, President/COO (12/18/02); First Heartland Capital, Inc., Julius J. Anderson, Vice President (12/27/02); FMN Capital Corporation, David W. Schofield, Director of Operations and Compliance 12/18/02); IFG Network Securities, Inc., R. Jack Conley, President/CEO (12/18/02); Invest Financial Corporation, Lynn R. Niedermeier, President/CEO (12/17/02); Investment Centers of America, Inc., Greg Gunderson, President (12/16/02); Iron Street Securities Inc., Robert L. Hamman, President (12/24/02); JKR & Company, Inc., J. Kemp Richardson, President (12/10/02); John Hancock Financial Services, Inc., Robert H. Watts, SVP/CCO, (12/17/02) & Another Letter (1/16/03) (additional comments); Kyson & Co., Kao Sheng Lin, President (11/25/02); Lesko Securities, Inc., Charles Lesko, Jr., President (12/18/02); Liberty Life Securities, LLC, John T. Treece, President (1/15/03); Locust Street Securities, Inc., Jacqueline C. Conley, VP, Compliance (12/13/02); Main Street Securities, LLC, David L. Meckenstock, VP/CCO (12/13/02); Monitor Capital, Inc., Hsiao-wen, President (11/25/02); Multi-Financial Securities Corp., Patrick H. McEvoy, President/CEO (12/16/02); Mutual Securities, Inc., William L. Sabol, President (11/26/02); Mutual Service Corp., Dennis S. Kaminski, EVP/CAO (12/18/02); MWA Financial Services, Robert M. Roth, President (12/18/02); National Planning Corporation, M. Shawn Dreffein, President (12/2/02); Pacific West Securities, Inc., Philip A. Pizelo, President (1/14/03); PrimeVest Financial Services, Inc., Kevin P. Maas, VP, Director of Compliance (no date); Princor Financial Services Corp., Minoo Spellerberg, Compliance Officer (12/16/02); Quest Securities, Inc., Robert J. Schoen, President (11/22/02); Rhodes Securities, Inc., Sandra T. Masek, EVP/COO (12/17/02); Rhodes Securities, Inc., Sandra T. Masek, EVP/COO (12/17/02); Securities America, Inc., Bryan R. Hill, President (12/16/02); The Leaders Group, Inc., Z. Jane Riley, Compliance Officer (12/13/02); Transamerica Financial Advisors, Inc., Sandy Brown, President/COO (12/16/02); United Planners' Financial Services of America, Thomas H. Oliver, President/CEO (12/13/02); USAllianz Securities, Inc., Michael D. Burns, CCO (12/16/02); Vestax Securities Corp., R. Jack Conley, President/CEO (12/17/02); Washington Square Securities, Inc., Tom K. Rippberger, VP/CCO (no date on letter); Waterstone Financial Group, Inc., Thomas A. Hopkins, Chairman, (12/16/02); Wharton Equity Corp., Malcom A. Morrison, President (1/10/03); World Group Securities, Inc., Leesa M. Easley, Chief Legal Officer (12/19/02); World Trade Financial Corporation, Rod P. Michel, President (12/31/02).

[15] See Woodbury Financial Services, Inc., Michael G. Brennan, Associate Counsel/Assistant Secretary (12/18/02).

regional or district sales managers, or any person performing a similar supervisory function. Proposed NYSE Rule 3012 provides that a person who is senior to the producing manager must perform these supervisory reviews; however, if a member does not conduct a public business, or has a capital requirement of $5,000 or less, or employs ten or fewer representatives, and its business is conducted in a manner necessitated by a limitation of resources that includes fewer than two layers of supervisory personnel, a person in another office who is in the same or similar position to the producing manager may conduct the supervisory review, provided that the person does not have supervisory responsibility over the activity being reviewed, reports to his supervisor his supervision and review of the producing manager, and has not performed a review of the producing manager in the last two years.

The supervisory policies and procedures required under proposed Rule 3012 also must include procedures reasonably designed to provide heightened supervision over the activities of each producing manager who is responsible for generating 20% or more of the income of the producing manager's supervisor. The proposed rule does not mandate the contents of such heightened supervisory procedures, in recognition of the fact that such procedures will vary depending on the business models and needs of each particular member. In establishing such heightened supervisory procedures, however, members should consider such elements as unannounced supervisory reviews, an increased number of supervisory reviews by different reviewers within a certain period, a broader scope of activities reviewed, and/or having one or more principals approve the supervisory review of such producing managers. These examples are meant to illustrate the type of procedures a member may want to include in its heightened supervisory procedures and are not meant to be an exclusive or exhaustive list of heightened supervisory procedures a member may need to put in place. NASD believes that proposed Rule 3012, as amended herein, should allow members sufficient flexibility to create the supervisory control procedures mandated by the rule without creating undue burdens and costs.

Several commenters mentioned that the requirements in proposed NASD Rule 3012 to test and verify a member's supervisory procedures and make any changes identified through the testing and verification procedures appear to be substantially similar to NASD Rule 3010(a)(8), which requires a member to review the supervisory system and make any appropriate changes. Commenters stated that it would be redundant to require a member to conduct two separate, yet very similar, reviews of the member's supervisory procedures to determine if changes need to be made.[16]

NASD is aware of the similarity of the two supervisory review requirements. Accordingly, NASD is amending the proposed rule change to combine the two supervisory review requirements into proposed NASD Rule 3012 and eliminate NASD Rule 3010(a)(8) altogether.

One commenter stated that proposed NASD Rule 3012's requirement that specific supervisory controls be in place to address the transmittal of funds between accounts, changes of customers' addresses, and changes in customers' investment objectives should apply only to retail customer activity and not to institutional customer activity. An institutional exemption is sought because much of that business is done on a delivery-versus-payment or receipt-versus-payment basis or via prime brokerage arrangements that involve system and controls that are markedly different from retail account servicing.[17] NASD, however, believes that it is reasonable and appropriate that regulatory oversight in the sensitive areas designated in proposed NASD Rule 3012 extend to institutional account activity.

NASD is retaining NASD Rule 3012's originally proposed provision that any member in compliance with substantially similar requirements of the New York Stock Exchange, Inc. (''NYSE'') shall be deemed to be in compliance with NASD Rule 3012. NASD believes that this provision helps promote consistency between NASD's and the NYSE's supervisory control requirements.

ii. *Comments on NASD Rule 3010 (Supervision) and Proposed Changes.* As originally proposed, the changes to NASD Rule 3010 require that office inspections be conducted by a person who is ''independent'' from the activities being performed at the office and the people providing supervision to that office. In addition, office inspections must include, without limitation, the testing and verification of the member's supervisory policies and procedures in the areas of: Safeguarding customer funds and securities; maintaining books and records; supervision of customer accounts serviced by branch office managers; transmittal of funds between customers and registered representatives and between customers and third parties; validation of customer address changes; and validation of changes in customer account information.

Many commenters requested clarification regarding who would be sufficiently ''independent'' to conduct the office inspections required in NASD Rule 3010.[18] At least one commenter stated that the ''independence'' requirement in NASD Rule 3010 appears to refer to someone within the firm who does not receive compensation based on sales.[19] Many commenters stated that the ''independence'' requirement in NASD Rule 3010(c)

[16] Clark/Bardes Financial Services, Inc., Kevin Ballou, President (3/17/03); Financial Network Investment Corp., Jack R. Handy, Jr., President (12/13/02); Financial Northeastern Companies, Dominick Del Duca, CCO (12/12/02); IFG Network Securities, Inc., R. Jack Conley, President/CEO (12/18/02); Locust Street Securities, Inc., Jacqueline C. Conley, VP, Compliance (12/13/02); MML Investors Services, Inc., Michael L. Kerley, VP/Chief Legal Officer (12/17/02); Multi-Financial Securities Corp., Patrick H. McEvoy, President/CEO (12/16/02); PrimeVest Financial Services, Inc., Kevin P. Maas, VP, Director of Compliance (no date on letter); Vestax Securities Corp., R. Jack Conley, President/CEO (12/17/02); Washington Square Securities, Inc., Tom K. Rippberger, VP/CCO.

[17] 1st Global, Inc., Stephen Batman, CEO (12/18/02); Securities Industry Association, Self-Regulation and Supervisory Practices Group, Christopher R. Franke, Chairman—Self-Regulation and Supervisory Practices Committee (12/18/02).

[18] 1st Global, Inc., Stephen Batman, CEO; AIG Advisor Group, Inc., Bridget M. Gaughan, EVP (12/30/02); Cambridge Investment Research, Inc., Terry L. Lister, General Counsel (12/20/02); Charles Schwab & Co., Inc., Selwyn J. Noteliovitz, SVP (2/25/03); Clark/Bardes Financial Services, Inc., Kevin Ballou, President (3/17/03); Commonwealth Financial Network, Peter T. Wheeler, President (12/17/02); CUNA Brokerage Services, Inc., Marcia L. Martin, President (12/19/02); FFP Securities, Inc., Craig A. Junkins, President/CEO (12/18/02); First Allied Securities, Inc., Adam Antoniades, President/COO (12/18/02); Invest Financial Corporation, Lynn R. Niedermeier, President/CEO (12/17/02); Investment Centers of America, Inc., Greg Gunderson, President (12/16/02); Lesko Securities, Inc., Charles Lesko, Jr., President (12/18/02); Midland National Life Insurance, P.M. Phalen, Assistant Vice President (12/17/02); MML Investors Services, Inc., Michael L. Kerley, VP/Chief Legal Officer (12/17/02); Mutual Service Corp., Dennis S. Kaminski, EVP/CAO (12/18/02); MWA Financial Services, Robert M. Roth, President (12/18/02); Princor Financial Services Corp., Minoo Spellerberg, Compliance Officer (12/16/02); Rhodes Securities, Inc., Sandra T. Masek, EVP/COO (12/17/02); Securities America, Inc., Bryan R. Hill, President (12/16/02); Securities Industry Association, Self-Regulation and Supervisory Practices Group, Christopher R. Franke, Chairman—Self-Regulation and Supervisory Practices Committee (12/18/02); United Planners' Financial Services of America, Thomas H, President, CEO (12/13/02); USAllianz Securities, Inc., Michael D. Burns, CCO (12/16/02); Waterstone Financial Group, Inc., Thomas A. Hopkins, Chairman, (12/16/02); World Group Securities, Inc., Leesa M. Easley, Chief Legal Officer (12/19/02).

[19] *See* Woodbury Financial Services, Inc., Michael G. Brennan, Associate Counsel/Assistant Secretary (12/18/02).

would severely reduce the number of principals eligible to conduct branch exams and would put enormous pressure on home office exam personnel to conduct more office inspections.[20] Commenters suggested that if home office exam personnel had to conduct more office inspections, the audit cycle would have to be extended to multiple-year durations and the quality of the audits would decline.[21]

In response to commenters' concerns, NASD is amending Rule 3010 to replace the proposed ''independence'' requirement with a prohibition that an office inspection cannot be conducted by a branch office manager or any person within that office who has supervisory responsibilities or by any individual who is supervised by such person(s). In addition, members must establish heightened inspection procedures in situations where the person conducting the inspection either works in an office supervised by the branch office manager's supervisor or reports to the branch office manager's supervisor *and* the branch office manager generates 20% or more of the supervisor's income. The proposed rule does not mandate the contents of such heightened inspection procedures, in recognition of the fact that such procedures will vary depending on the business models and needs of each particular member. In establishing such heightened inspection procedures, however, members should consider such elements as unannounced office inspections, increased frequency of inspections, a broader scope of activities inspected, and/or having one or more principals review and approve the office's inspections. These examples are meant to illustrate the type of procedures a member may want to include in its heightened inspection procedures and are not meant to be an exclusive or exhaustive list of heightened inspection procedures a member may need to put in place. NASD believes that this proposed rule change should allow members sufficient flexibility to assign personnel to conduct office inspections without creating undue burdens and costs.

Because NASD has removed the ''independence'' requirement regarding inspections conducted pursuant to NASD Rule 3010(c), NASD is removing the provision in NASD Rule 3010(c) that would have allowed members to seek an exemption from the independence requirement in NASD Rule 3010(c) subject to specified terms and conditions. NASD is also removing NASD Rule 3010(c) from the list of rules in NASD Rule 9610(a) from which a member can seek an exemption.

Many commenters argued that the current supervisory system, which allows Office of Supervisory Jurisdiction (''OSJ'') managers to conduct office inspections of branch and satellite offices should be retained because it was both effective and cost efficient.[22] Commenters noted that OSJ managers are the most familiar with registered representatives and activities located at particular offices, and therefore, are the most qualified to perform the periodic inspections. In addition, OSJ managers' auditing of branch and satellite offices serves to reinforce their accountability for the registered representatives' actions.[23]

As stated previously, the proposed change to NASD Rule 3010 has eliminated the proposed ''independence'' requirement with a prohibition that an office inspection cannot be conducted by a branch office manager or any person within that office who has supervisory responsibilities or by any individual who is supervised by such person(s). This structure allows OSJ managers to conduct office inspections in any location where the OSJ manager is senior to the office's branch manager. In addition, NASD is amending NASD Rule 3010 to codify previous NASD guidance that non-supervisory branch offices be inspected every three years and that all non-branch locations be inspected periodically.[24]

iii. *Comments on Changes to NASD Rule 2510 (Discretionary Accounts) and Proposed Changes.* As originally

[20] 1st Global, Inc., Stephen Batman, CEO (12/18/02); AIG Advisor Group, Inc., Bridget M. Gaughan, EVP (12/30/02); American Express Financial Advisors, Inc., Beth E. Weimer, VP & CCO (1/17/03); Cambridge Investment Research, Inc., Terry L. Lister, General Counsel (12/20/02); Clark/Bardes Financial Services, Inc., Kevin Ballou, President (3/17/03); CUNA Brokerage Services, Inc., Marcia L. Martin, President (12/19/02); Equity Services, Inc., Gregory D. Teese, VP (12/18/02); FFP Securities, Inc., Craig A. Junkins, President/CEO (12/18/02); Financial Network Investment Corp., Jack R. Handy, Jr., President (12/13/02); First Allied Securities, Inc., Adam Antoniades, President/COO (12/18/02); IFG Network Securities, Inc., R. Jack Conley, President/CEO (12/18/02); Invest Financial Corporation, Lynn R. Niedermeier, President/CEO (12/17/02); Investment Centers of America, Inc., Greg Gunderson, President (12/16/02); John Hancock Financial Services, Inc., Robert H. Watts, SVP/CCO, (12/17/02); Lesko Securities, Inc., Charles Lesko, Jr., President (12/18/02); Linsco/Private Ledger, Corp., James F. McGuire, SVP & CCO (1/16/03); Locust Street Securities, Inc., Jacqueline C. Conley, VP, Compliance (12/13/02); Multi-Financial Securities Corp., Patrick H. McEvoy, President/CEO (12/16/02); Mutual Service Corp., Dennis S. Kaminski, EVP/CAO (12/18/02); MWA Financial Services, Robert M. Roth, President (12/18/02); PrimeVest Financial Services, Inc., Kevin P. Maas, VP, Director of Compliance (No Date on Letter); Princor Financial Services Corp., Minoo Spellerberg, Compliance Officer (12/16/02); Rhodes Securities, Inc., Sandra T. Masek, EVP/COO (12/17/02); Securities America, Inc., Bryan R. Hill, President (12/16/02); Transamerica Financial Advisors, Inc., Sandy Brown, President/COO (12/16/02); United Planners' Financial Services of America, Thomas H. Oliver, President/CEO (12/13/02); USAllianz Securities, Inc., Michael D. Burns, CCO (12/16/02); Vestax Securities Corp., R. Jack Conley, President/CEO (12/17/02); Washington Square Securities, Inc., Tom K. Rippberger, VP/CCO (No Date on Letter); Waterstone Financial Group, Inc., Thomas A. Hopkins, Chairman, (12/16/02).

[21] 21st Century Financial Services, Inc., Charles Mazziotti, President (12/17/02); AIG Advisor Group, Inc., Bridget M. Gaughan, EVP (12/30/02); Brookstreet Securities Corporation, Stanley C. Brooks, President, CEO (12/4/02); Cambridge Investment Research, Inc., Terry L. Lister, General Counsel (12/20/02); Clark/Bardes Financial Services, Inc., Kevin Ballou, President (3/17/03); CUNA Brokerage Services, Inc., Marcia L. Martin, President (12/19/02); Duerr Financial Corporation, William Partin, President (11/27/02); Eagle One Investments, LLC, Steven J. Svoboda, President (12/16/02); FFP Securities, Inc., Craig A. Junkins, President/CEO (12/18/02); Financial Network Investment Corp., Jack R. Handy, Jr., President (12/13/02); First Allied Securities, Inc., Adam Antoniades, President/COO (12/18/02); First Heartland Capital, Inc., Julius J. Anderson, Vice President; (12/27/02); FMN Capital Corporation, David W. Schofield, Director of Operations (12/18/02); IFG Network Securities, Inc., R. Jack Conley, President/CEO (12/18/02); Invest Financial Corporation, Lynn R. Niedermeier, President/CEO (12/17/02); Investment Centers of America, Inc., Greg Gunderson, President (12/16/02); Iron Street Securities Inc., Robert L. Hamman, President (12/24/02); JKR & Company, Inc., J. Kemp Richardson, President (12/10/02); Kyson & Co., Kao Sheng Lin, President (11/25/02); Lesko Securities, Inc., Charles Lesko, Jr., President (12/18/02); Liberty Life Securities, LLC, John T. Treece, President (1/15/03); Locust Street Securities, Inc., Jacqueline C. Conley, VP, Compliance (12/13/02); Main Street Securities, LLC, David L. Meckenstock, VP/CCO (12/13/02); Monitor Capital, Inc., Hsiao-wen, President (11/25/02); Multi-Financial Securities Corp., Patrick H. McEvoy, President/CEO (12/16/02); Mutual Securities, Inc., William L. Sabol, President (11/26/02); Mutual Service Corp., Dennis S. Kaminski, EVP/CAO (12/18/02); MWA Financial Services, Robert M. Roth, President (12/18/02); National Planning Corporation, M. Shawn Dreffein, President (12/2/02); Pacific West Securities, Inc., Philip A. Pizelo, President (1/14/03); PrimeVest Financial Services, Inc., Kevin P. Maas, VP, Director of Compliance (no date); Princor Financial Services Corp., Minoo Spellerberg, Compliance Officer (12/16/02); Quest Securities, Inc., Robert J. Schoen, President (11/22/02); Rhodes Securities, Inc., Sandra T. Masek, EVP/COO (12/17/02); Securities America, Inc., Bryan R. Hill, President (12/16/02); The Leaders Group, Inc., Z. Jane Riley, Compliance Officer and/CEO (12/13/02); Transamerica Financial Advisors, Inc., Sandy Brown, President/COO (12/16/02); United Planners' Financial Services of America, Thomas H. Oliver, President/CEO (12/13/02); USAllianz Securities, Inc., Michael D. Burns, CCO (12/16/02); Vestax Securities Corp., R. Jack Conley, President/CEO (12/17/02); Washington Square Securities, Inc., Tom K. Rippberger, VP/CCO (no date on letter); Waterstone Financial Group, Inc., Thomas A. Hopkins, Chairman, (12/16/02); Wharton Equity Corp., Malcom A. Morrison, President (1/10/03); World Group Securities, Inc., Leesa M. Easley, Chief Legal Officer (12/19/02); World Trade Financial Corporation, Rod P. Michel, President (12/31/02).

[22] *Id.*

[23] *Id.*

[24] *See* NASD *Notice to Members* 98–38 (May 1998); NASD *Notice to Members* 99–45 (June 1999).

proposed, changes to NASD Rule 2510(d)(1) require that time and price discretionary authority be limited to the day it is granted, absent written authorization to the contrary. Several commenters argued that the one-day time and price discretionary authority should be limited only to retail accounts and that NASD should craft an exemption for institutional accounts.[25] Commenters argue that large orders for institutional accounts are ''worked'' over one or more days on a Good-Till-Cancelled/Not-Held basis.

NASD believes that a general institutional exemption is inappropriate. However, in response to commenters' concerns, NASD is amending NASD Rule 2510 to clarify that written authorization need not be obtained for the exercise of time and price discretion beyond the day a customer grants such discretion for orders effected with or for an institutional account, as that term is defined in NASD Rule 3110(c)(4), that are exercised pursuant to valid Good-Till-Cancelled instructions issued on a ''not held'' basis. NASD is also making a technical amendment to NASD Rule 3110(c)(4) to include a reference to the definition's applicability to NASD Rule 2510.

Commenters requested that NASD clarify that the requirement to obtain written instructions for the exercise of time and price discretion beyond the business day it was granted allows customers to issue general ''standing'' instructions, rather than issuing written instructions on an order-by-order basis.[26]

The current text of NASD Rule 2510(d) clearly limits the exercise of time and price discretion to ''the purchase or sale of a definite amount of a specified security. * * *'' Any written authorization granting time and price discretion must comply with this established, trade-specific standard. Customers who wish to grant more extensive discretionary authority to their registered representatives may do so pursuant to a fully executed trading authorization.

iv. *Comments on NASD Rule 3110 (Books and Records).* As originally proposed, changes to NASD Rule 3110 require that, before a customer order is executed, the account name or designation must be placed upon the memorandum for each transaction. In addition, only a designated person may approve any changes in account names or designations. The designated person also must document the essential facts relied upon in approving the changes and maintain the record in a central location. The designated person must pass a qualifying principal examination appropriate to the business of the firm before he or she can approve these changes.

One commenter stated that its clerical staff is responsible for making changes to account names or designations and that requiring a principal to authorize the changes and be informed of the surrounding facts would place undue burden and cost upon the firm.[27]

NASD understands the concerns that the proposed rule changes may place additional costs and burdens upon members. However, NASD believes that account names and designations are material information that must be protected from possible fraudulent activity. Requiring a principal to authorize the change and be aware of the surrounding facts for the change is a relatively low-cost method of protecting this information.

The same commenter stated that the requirement that a name or account designation be placed on ''each transaction'' is impractical for the administration of a variable life or variable annuity policy because dozens of transactions involving expense and insurance charges automatically occur each month for the multitude of funds associated with each policy.[28]

NASD proposed this rule change to promote consistency with the SEC's books and records rules. Specifically, SEC Rule 17a–3(a)(6) requires that a memorandum of each brokerage order identify, among other things, the account for which the order was entered.[29] NASD expects that members, regardless of the type of securities business they engage in, will comply with this requirement in the same manner that they comply with the SEC's books and records requirements.

At least one commenter requested clarification regarding whether a firm may avoid duplicate records by maintaining the ''Account Designation Change'' documentation ''in the location whether the determination and approval occurs,'' rather than in the central location of the ''Home Office.''[30]

NASD does not believe that the new account designation change recordkeeping requirement should be unduly complicated or burdensome for members. Accordingly, NASD has amended the proposed rule change to require members to preserve these records in a manner substantially similar to the record retention requirements of SEC Rule 17a–4.[31] Specifically, the proposed rule change requires members to preserve account designation change documentation for a period of not less than three years, with the documentation preserved for the first two years in an easily accessible place, as the term ''easily accessible place'' is used in SEC Rule 17a–4. This proposed change will not only allow members to use existing recordkeeping systems to meet this requirement, but it will enable members to make the account designation change documentation promptly available if requested by NASD examination staff. It also promotes consistency with NASD Rule 3110's existing mandate that members' recordkeeping format, medium, and retention periods comply with SEC Rule 17a–4 requirements.

v. *Comments on IM–3110 (Customer Account Information).* As originally proposed, changes to IM–3110 would permit a member, upon a customer's written instructions, to hold mail for a customer who will not be at his or her usual address for the period of his or her absence, but not to exceed (A) two months if the member is advised that the customer will be on vacation or traveling or (B) three months if the customer is going abroad.

At least one commenter stated that a member would have to impose additional recordkeeping and administrative controls to avoid lost or misplaced mail in situations where a customer that travels frequently looks to a member to provide custody of his or her mail.[32] If a member provides this service to its customers, NASD understands that the member may have to put in place additional procedures to comply with the limitations set forth in this rule. However, the rule will help to ensure that members that do hold mail for customers who are away from their usual addresses, do so only pursuant to the customers' written instructions and

[25] A.G. Edwards & Sons, Inc., Brian C. Underwood, SVP (12/18/02); Charles Schwab & Co., Inc., Selwyn J. Noteliovitz, SVP (2/25/03); National Society of Compliance Professionals, Inc., Joan Ht & CEO (1/8/03); Securities Industry Association, Self-Regulation and Supervisory Practices Group, Christopher R. Franke, Chairman—Self-Regulation and Supervisory Practices Committee (12/18/02).

[26] National Society of Compliance Professionals, Inc., Joan Hinchman, Executive Director, President & CEO (1/8/03); Securities Industry Association, Self-Regulation and Supervisory Practices Group, Christopher R. Franke, Chairman—Self-Regulation and Supervisory Practices Committee (12/18/02).

[27] Midland National Life Insurance, P.M. Phalen, Assistant Vice President (12/17/02).

[28] *Id.*

[29] 17 CFR 240.17a–3(a)(6).

[30] *See* A.G. Edwards & Sons, Inc., Brian C. Underwood, SVP (12/18/02).

[31] 17 CFR 240.17a–4.

[32] John Hancock Financial Services, Inc., Robert H. Watts, SVP/CCO (12/17/02) & additional comments (1/16/03).

for a specified, relatively short period of time. Thus, there is a reduced likelihood of risk that customers would not receive account statements or other account documentation at their usual addresses. In addition, the rule will help to ensure that customers provide the firms with which they do business current address information, insofar as a firm will not be permitted to hold mail indefinitely.

vi. *Comments on the Effective Date of the Rule Change.* At least one commenter has requested that the effective date of any new requirements be delayed for 6 to 9 months after the approval date.[33] In response, NASD is proposing to establish an effective date of six months from SEC approval of the proposed rule change to allow members sufficient time to address any necessary procedural or system changes.

vii. *Comments on the Insufficient Comment Process.* Many commenters criticized NASD for not publishing the proposed rule changes for comment prior to filing them with the SEC, stating that the initial comment period that followed the filing date was insufficient for everyone who wanted to comment to submit their comments in a timely manner. Commenters requested additional time to submit further comments on the proposed rule changes.[34]

In response to earlier requests for additional time to submit comments on the proposed rule changes, the initial comment period was extended an additional 30 days. In addition, it is our understanding that the SEC will be publishing the new proposed rule changes for comment to allow concerned parties to submit their comments on the proposed changes described herein.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[35] which 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. NASD believes that the proposed rule change is designed to accomplish these ends by requiring members to establish more extensive supervisory and supervisory control procedures to monitor customer account activities of its employees and thereby reduce the potential for customer fraud and theft.

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

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

The SEC received 72 written comment letters. NASD's response to those comment letters is discussed in Section II above.

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

Within 35 days of the date of 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 Amendment Nos. 1 and 2, including whether the amendments are 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 NASD. All submissions should refer to File No. SR–NASD–2002–162 and should be submitted by September 3, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[36]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20601 Filed 8–8–03; 8:45 am]

BILLING CODE 8010–01–P

[33] Pacific Select Distributors, Inc., John L. Dixon, President (12/18/02).

[34] AIG Advisor Group, Inc., Bridget M. Gaughan, EVP (12/30/02); Commonwealth Financial Network, Peter T. Wheeler, President (12/17/02); CUNA Brokerage Services, Inc., Marcia L. Martin, President (12/19/02); FFP Securities, Inc., Craig A. Junkins, President/CEO (12/18/02); First Allied Securities, Inc., Adam Antoniades, President/COO (12/18/02); Invest Financial Corporation, Lynn R. Niedermeier, President/CEO (12/17/02); Investment Centers of America, Inc., Greg Gunderson, President (12/16/02); Lesko Securities, Inc., Charles Lesko, Jr., President (12/18/02); Mutual Service Corp., Dennis S. Kaminski, EVP/CAO (12/18/02); Pacific Select Distributors, Inc., John L. Dixon, President (12/18/02); Princor Financial Services Corp., Minoo Spellerberg, Compliance Officer (12/16/02); Rhodes Securities, Inc., Sandra T. Masek, EVP/COO (12/17/02); Securities America, Inc., Bryan R. Hill, President (12/16/02); Transamerica Financial Advisors, Inc., Sandy Brown, President/COO (12/16/02); United Planners' Financial Services of America, Thomas H. Oliver, President/CEO (12/13/02); USAllianz Securities, Inc., Michael D. Burns, CCO (12/16/02); Waterstone Financial Group, Inc., Thomas A. Hopkins, Chairman (12/16/02).

[35] 15 U.S.C. 78o–3(b)(6).

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48285; File No. SR–NSCC–2003–10]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Trade Comparison Service and Fee Schedule

August 5, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on May 20, 2003, the National Securities Clearing Corporation (''NSCC'') 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 primarily by NSCC. 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 proposed rule change will make conforming changes to NSCC Rule 7 (Comparison and Trade Recording Operation) and Addendum A (Fee Structure) that were inadvertently not made by previous rule changes. The current rule change will delete references to Demand Withhold and

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