dealer firms seeking to facilitate customer orders, without adversely impacting the prices those orders receive.

The Commission finds that the CBOE's proposal to grant a 20% participation right, under certain conditions, to member firms seeking to execute facilitation crosses on the Exchange is reasonable. Currently, CBOE market makers have priority rights for the full size of a customer order over the firm that brings a crossing transaction to the CBOE floor.

The Commission does not find persuasive the OMMA's argument that the proposal would allow member firms to trade at an unfair price. A member firm could never execute a facilitation cross, under the proposal, at an inferior price. It would be required at least to match the best bid or offer provided by the crowd in response to the floor broker's request for a market in order to participate in the transaction at all.

While the proposal entitles the member firm to 20% of a facilitation transaction, it leaves 80% of the order to the trading crowd. The Commission believes that because 80% of an order would remain available to the market maker or market makers quoting the best price, the proposal raises no serious concern that price competition will be eroded on the Exchange. [23]

The Commission finds good cause for approving Amendment Nos. 1, 2, and 3 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[24] Amendment No. 1 adds the provision, described above, that would provide a participation guarantee to a member firm seeking to facilitate a customer order even when it only matches, but does not improve upon, the prices given by the crowd in response to the floor broker's initial request for a market. Amendment No. 1 also reduces the minimum size of orders to which the proposed rule change would be applicable, from 500 to 50 contracts.

The Commission has already approved rules of several options exchanges that establish participation guarantees of 20% or more for firms seeking to facilitate orders at the best prices offered by other market participants. [25] Similarly, the Commission has already approved rules of several options exchanges that provide such guarantees for order sizes with a minimum of 50 contracts. [26] Thus, these aspects of Amendment No. 1 raise no new regulatory issues.

Amendment No. 1, as supplemented and revised by Amendment No. 2, also include further clarifications of procedures and priority rights under the proposed rule change consistent with CBOE's facilitation cross rule for equity options. These provisions strengthen the proposed rule change and raise no new regulatory issues.

Amendment No. 3 specifies that the proposed rule change would apply only to broad-based index options that are not traded in equity trading crowds, clarifying the proposal's applicability and raising no new issues. Amendment No. 3 also includes the provision described above concerning DPM participation, which limits the total percentage of an order that may be guaranteed, to the originating firm and the DPM combined, to no more than 40%. This limitation accords with rules that the Commission has previously found consistent with the Act. [27]

Accordingly, the Commission finds good cause, consistent with Sections 6(b)(5) [28] and 19(b)(2) [29] of the Act to accelerate approval of Amendments Nos. 1, 2, and 3 to the proposed rule change.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1, 2, an 3, including whether Amendment Nos. 1, 2, and 3 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. 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 CBOE. All submissions should refer to File No. SR–CBOE–99–35 and should be submitted by August 28, 2000.

VI. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–CBOE–99–35), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

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[23] As the Commission recently stated, it is difficult to assess the precise level at which guarantees may begin to erode competitive market maker participation and potential price competition within a given market. However, for the immediate term, the Commission has approved participation guarantees of up to 40% of an order as not clearly inconsistent with the statutory standards of competition and free and open markets. *See* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000). The proposed rule change, which would allocate only 20% of an order to the member firm, falls well within these parameters.

[24] 15 U.S.C. 78s(b)(2)

[25] *See* Securities Exchange Act Release Nos. 42894 (June 2, 2000) (concerning File No. SR-Amex-99–36); 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000) (concerning File No. SR–CBOE–99–10, for equity options); 42848 (May 26, 2000) (concerning File No. SR–PCX–99–18); and 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (concerning registration of the International Securities Exchange (''ISE'') as a national securities exchange, and, among other features of the exchange, the ISE's facilitation provisions).

[26] *See* Securities Exchange Act Release Nos. 42894 (June 2, 2000) (concerning File No. SR–Amex–99–36); 42835 (May 26, 2000) (concerning File No. SR–CBOE–99–10, for equity options); and 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (concerning ISE's facilitation provisions, among other features).

[27] *See surpa,* note 23.

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43102; File No. SR–NASD–99–76]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to the Code of Procedure and Other Provisions

August 1, 2000.

On December 28, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, NASD Regulations, Inc. (''NASD Regulation''). filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule

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

19b–4 thereunder.[2] NASD Regulation has proposed amendments to the NASD Code of Procedure and other provisions of the NASD Rules. The proposed rule change and Amendment No. 1[3] to the proposal were published for comment in the **Federal Register** on May 10, 2000.[4] The Commission received one comment letter on the proposal.[5] This order approves the proposed rule change, as amended.

I. Description of the Proposal

NASD Regulation is proposing amendments to the NASD Code of Procedure (the ''Code'') and other provisions of the NASD Rules, that include: (1) Requiring members to designate, as the custodian of the record on the Ford BDW, persons who are associated with the firm at the time the forms are filed; (2) clarifying the authority of Hearing Officers and making some limited changes to that authority; (3) clarifying the scope of the Association's document production requirements; (4) providing for Hearing Panel review of staff determinations to impose limitations on member firms' business activities because of financial and/or operational difficulties; (5) providing for changes to the process for appeals of disciplinary actions, statutory disqualification proceedings, and certain other accelerated proceedings; (6) providing for a streamline process to impose bars or expulsions for the failure to provide information to the Association; and (7) providing for a process by which the Association can more expeditiously cancel memberships of firms that fail to meet the Association's eligibility and qualification standards.

Custodian of the Record

The Association is proposing to establish NASD Rule 3121 that would require members to designate, as the custodians of the record on the Form BDW, persons who are associated with the firms at the time the forms are filed.

Eligibility of Panel Members

In certain circumstances, the National Adjudicatory Council (NAC) or the Review Subcommittee of the NAC (Review Subcommittee) may appoint panels to conduct hearings. Under NASD Rule 1015, only one panel member can be from the NAC, unless a panel member is also a former NASD Regulation Director of NASD Governor. The Association believes that this unnecessarily limits the pool of potential panelists. Accordingly, the Association is proposing to eliminate this restriction.

Investigations

The NASD Rule 8220 Series permits the Department of Enforcement to initiate proceedings to suspend or cancel membership from the Association or suspend the association of a person with a member based upon the failure to provide information. These proceedings may be initiated for the failure to provide information pursuant to an Association request or the failure to make required filings with the Association, such as FOCUS reports, or to keep membership applications or supporting documents current. Because the Rule 8220 Series proceedings are brought on an accelerated basis, the Association is proposing to amend the Rule 8220 Series to:

(1) Limit the use of Rule 8220 Series proceedings to address the most serious on-going violations concerning associated persons and members who fail to provide the Association with requested information; and

(2) Limit the sanctions available under Rule 8220 proceedings to suspensions.

Finally, the Association is proposing to amend the service provision under the Rule 8220 Series to make it consistent with the service provision under the Rule 9530 Series, a similar rule series. The Association is proposing that both the Rule 8220 Series and the Rule 9530 Series service provisions permit personal service, service by facsimile, and service by overnight courier. The Association is further proposing to clarify that attempted delivery of a document by an overnight courier constitutes service under these provisions.

Severance of Cases

The Association is proposing to amend NASD Rule 9214 to authorize the Chief Hearing Officer to sever disciplinary proceedings involving multiple respondents into two or more proceedings. The proposed rule also lists the factors the Chief Hearing Officer must consider in determining whether to order severance.

Producing Documents

The Association is proposing amendments to NASD Rule 9253 to clarify the scope of the Association's document production requirements. NASD Rule 9251(a) requires the Association staff to make available to respondents documents prepared or obtained by the staff in connection with the investigations that led to the institution of a disciplinary proceeding. Exceptions to the production requirements are listed in NASD Rule 9251(b), and include examination and inspection reports and internal employee communications. Notwithstanding these exceptions, documents containing the staff's investigative techniques might become discoverable under Rule 9253, if staff members are called as witnesses during hearings. NASD Rule 9253 requires Association staff to produce written statements made or adopted by staff members, if they relate to the subject matter of those persons' testimony. It also requires the staff to produce contemporaneously recorded recitals of oral statements made by witnesses, if those written statements are substantially verbatim.

The proposed modifications of NASD Rule 9253 clarify that the only portions of routine examination or inspection reports, internal employee communications, and any other internal documents that are required to be produced, under this rule, are the portions outlining the substance of (and any conclusions regarding) oral statements made by persons who are not employees of the Association when evidence of those statements are offered by Association staff during disciplinary hearings.

Amending Complaints

The Association is proposing to modify its rules regarding amending complaints to more closely follow the Federal Rules of Civil Procedure (''FRCP''). The Association is proposing to eliminate the restriction in NASD Rule 9212 that amendments must be based on ''new matters of fact or law.'' The Association is further proposing to modify NASD Rule 9212 to permit amendments to make complaints conform to the evidence presented, and to state that amendments to complaints will be freely granted when justice so requires. Association staff will still need to obtain Hearing Officer approval to amend complaints after answers have been filed.

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated April 17, 2000 (''Amendemnt No. 1''). Amendment No. 1 made substantive changes to the proposed rule language, including the deletion of certain provisions in the 9300 Series, Review of Disciplinary Proceeding by National Adjudicatory Council and NASD Board; Application for Commission Review.

[4] Securities Exchange Act Release No. 42751 (May 3, 1999), 65 FR 30163 (File No. SR–NASD–99–76).

[5] *See* Letter from George Brunelle, Brunelle & Hadjikow, to Jonathan G. Katz, Secretary, Commission, dated May 25, 2000.

Effective Dates of Sanctions

The Association is proposing to amend NASD Rules 9216, 9268, 9269, and 9360 to state that the effective dates of sanctions are the dates set by the Association staff, unless stated otherwise in orders, decisions, or settlement agreements. As a result of these changes, the Association believes that IM–8310–2 is no longer needed and, accordingly, is proposing to delete it. The NASD stated that this change will not affect its policy of automatically staying the imposition of the fines, disgorgement, and suspensions, pending review.

Summary Dispositions

The Association is proposing to modify NASD Rule 9264(a) to track the language in the FRCP, which permits parties to file a motion to eliminate issues that do not involve entire ''causes of actions.''

Further, the Association is proposing to modify NASD Rule 9264 to authorize Hearing Officers to deny, grant, or defer motions to dismiss without referring the matter to the full panel. The authority to grant such motions would be limited to jurisdictional issues, such as whether the complaint was filed within the two-year jurisdictional period. The Association believes that hearing Officers should be permitted to act on such motions, which generally involve technical legal questions, and do not require the input of industry representatives.

Default Decisions

The Association is proposing to modify NASD Rules 9269 to state that a motion to set aside a default decision should be made to the Hearing Officer that originally decided the motion for a default decision. If the Hearing Officer that issued the original order is not available, the Chief Hearing Officer shall appoint another Hearing Officer to decide the motion. Appeals from such denials could be made to the NAC or the Review Subcommittee.

Office of General Counsel—Requests for Additional Briefing

Under the NASD Rules 9311 and 9312, the General Counsel of NASD Regulation is required to obtain Review Subcommittee or NAC authorization to order parties to brief particular matters. The Association is proposing to eliminate this requirement because the Association believes that it is an unnecessary use of resources. However, the Association is proposing to include in the rules a process by which parties may challenge, before the Review Subcommittee or the NAC, requests for additional briefing made by the General Counsel.

Procedures for Regulation of Activities of a Member Experiencing Financial or Operational Difficulties

Under the NASD Rule 9410 Series, the Department of Member Regulation issues notices and holds initial hearings to determine whether members must limit their business activities as a result of financial or operational difficulties. members can appeal Member Regulation's decisions to the NAC, and the NAC or the Review Subcommittee will appoint a Subcommittee to participate in the review. The Association is proposing to amend the rule series to provide that firms may appeal limitations issued by the Department of Member Regulation to Hearing Panels that will consist of a Hearing Officer and two other panelists. Under the proposal, the Department of Member Regulation would not hold hearings, and the NAC would not participate in appeals under this rule series.

Currently, under the NASD Rule 9410 Series, an NASD Governor may initiate the review of a decision issued by the NAC not later than the next meeting of the NASD Board that is at least 15 days after the date on which the NASD Board received the proposed written decision of the NAC. The Association is proposing instead to allow the Executive Committee of the NASD Board to initiate the review of the Hearing Panel decision for a period of 15 days. In addition, the Department of Member Regulation's decision is currently stayed unless otherwise ordered by the NAC. The Association is proposing to modify this provision to provide that the Department of Member Regulation's recommendation is stayed unless ordered otherwise by the Executive Committee.

Other Proceedings

Two categories of expedited proceedings available under the NASD Rule 9510 Series are referred to as ''Summary Proceedings'' and ''Non-Summary Proceedings.'' The Association is proposing several amendments to the rules that govern the Code's Summary and Non-Summary Proceedings. The Association is proposing to add a provision to the NASD Rules 9500 series stating that the Hearing Officer shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth under Rule 9235.

NASD Rule 9514(a)(1) requires that requests for hearings be filed within 7 days of receipt of suspension letters (or, with respect to notice of a pre-use filing requirement under Rule 2210(c)(4) and Rule 2220(c)(2), within 30 days of such notice). The Association is proposing to amend NASD Rule 9514(a)(2) to clarify that if the member or person subject to the notice does not timely request a hearing under Rule 9514(a)(1), the notice shall constitute final Association action.

NASD Rule 9514(d)(2) states that Non-Summary Proceedings held under the Rule 9500 Series need to be held within 21 days after respondent requests a hearing. Hearing Panels may, during the initial 21-day period, extend the time in which the hearings shall be held by additional 21-day periods. The Association believes that these periods are too short, and is proposing amending the rule to extend the initial period to 40 days, with an additional 30 days for a further extension.

A member, associated person, or other person who has been suspended or limited by a final action of the Association under the Rule 9510 Series may file a written request for reinstatement on the ground of full compliance with the conditions of the suspension or limitation. If the Association denies the request, the Association is proposing that the Review Subcommittee of the NAC, rather than the NASD Board, address an appeal from that denial, pursuant to NASD Rule 9516.

Eligibility Proceedings

The Association is proposing several changes to the NASD Rule 9520 Series that govern the process by which persons may become or remain associated with a member, notwithstanding the existence of a statutory disqualification or for a current member or person associated with a member to obtain relief from the eligibility or qualification requirements. First, the NASD Rule 9520 Series does not state whether extensions of time or waivers of time limitations for filing of papers or holding of hearings may be granted. The Association is proposing to create NASD Rule 9524(a)(5) that permits such actions by consent of all the parties. Further, the eligibility rules do not state whether the disqualification Hearing Panel or the NAC may order that the record be supplemented. The Association is proposing to create NASD Rule 9524(a)(3)(c) to permit the Hearing Panel to order the Parties to supplement the record with any additional evidence the Hearing Panel deems necessary.

Currently, NASD Rule 9524(b)(3) misstates that a decision by NAC becomes effective upon service to the disqualified member, sponsoring

member, or disqualified person. However, only the denials are effective upon service on applicants (subject to the applicant requesting a stay of effectiveness from the Commission). Under Rule 19h–1 under the Act, approval decisions are not effective until the Commission has either sent an acknowledgment letter to NASD Regulation (usually within 30 days, and the SEC can request a further 60-day extension of that period), or the Commission has entered an order in cases that have involved a previously-entered SEC bar (there is no time limitation for the entry of such an order). The Association is proposing to clarify NASD Rule 9524(b)(3) to accurately reflect the provisions of Rule 19h–1.

The Association is further proposing that Association Rule 9524(a)(1) be amended to state that members of the Statutory Disqualification Committee may also serve on Hearing Panels.

NASD Rule 9524(a)(3) states that if the Association staff initiates the proceedings, the Association will give to the applicant all documents that were relied on by the Association in issuing its notice. However, most applications are started by member firms, not the Association. The Association is proposing to amend this rule to reflect this fact.

The Association is also proposing to amend NASD Rule 9524(a)(3) to provide that once an application is filed, the CRD staff will gather all of the information necessary to process the application, including:

(1) CRD records for the disqualified member or person, sponsoring member, and the proposed supervisor; and

(a) All of the information submitted by the disqualified member or sponsoring member in support of the application.

Proposed NASD Rule 9524(a)(3) would further provide that the CRD staff will prepare an index of these documents, and simultaneously provide this index and copies of the documents to the disqualified member or sponsoring member, the Office of the General Counsel of NASD Regulation, and the Department of Member Regulation. The rule also would require the Department of Member Regulation to submit its recommendation and supporting documents to the Hearing Panel and the disqualified member or sponsoring member within 10 business days of the hearing, unless the parties otherwise agree. Similarly, the disqualified member or sponsoring member would be required to submit its documents to the Hearing Panel and the Department of Member Regulation with 10 business days of the hearing, unless otherwise agreed.

The NASD is also amending the Rule 9520 Series dealing with the review procedures used by Association staff in the case of certain disqualifying events. In particular, the Association is proposing to amend NASD Rule 9522(e) to permit members to submit a written request for relief (rather than an MC–400 application) [6] in cases where the disqualified member or person is subject to an injunction that was entered 10 or more years prior to the proposed admission or association. Under Exchange Act Rule 19h–1,[7] the NASD is not required to provide any notice to the Commission of the proposed admission or association in these types of cases. The Association also proposes that members be able to file a written request for relief in cases where a member requests to change the supervisor of a disqualified person or where, for instance, the New York Stock Exchange has determined to approve the proposed assocation of a disqualified person and the NASD concurs wit the determination. Member Regulation would also be granted discretion to approve the written request for relief in these cases, if it deemed such action to be consistent with the public interest and the protection of investors.

The Association also proposes to amend the NASD Rule 9520 Series to permit Member Regulation to approve an MC–400 application for relief in those cases where the disqualifying event is excepted from the full notice requirements of Rule 19h–1, but where a short form notification to the Commission under Rule 19h–1 is still required. In these cases, the member would be required to file an MC–400, but Member Regulation would have the discretion to approve the application when consistent with the public interest and the protection of investors.

In addition, the Association is proposing new Rule 9523 to permit Member Regulation to recommend the membership or continued membership of a disqualified member or sponsoring member or the association or continuing association of a disqualified person pursuant to a supervisory plan. The procedures set forth in proposed NASD Rule 9523 are modeled on current Rule 9216 concerning Acceptance, Waiver, and Consent procedures, and are intended to avoid the requirement of a formal hearing and decision by the Statutory Disqualification Committee (and its Hearing Panels) in cases that generally only involve the issue of what type of supervisory plan is appropriate for the disqualified member or person. Under proposed NASD Rule 9523, the member would be required to file an MC–400 application with the NASD. Member Regulation, however, would have the discretion to recommend the approval of the application in the event an appropriate supervisory plan is established. The member would be required to execute a letter consenting to the imposition of the supervisory plan. The letter and the supervisory plan would then be submitted to the Office of General Counsel or the Chairman of the Statutory Disqualification Committee for review and possible approval. While both the Office of General Counsel and the Committee Chairman would have authority to approve the application or refer it to the NAC, only the Committee Chairman would be permitted to reject the application.

Failure To Respond

As noted above (under the heading ''Investigations''), the Association amended the proceedings initiated under the Rule 8220 Series to address the most serious on-going violations concerning associated persons and members that are failing to provide the Association with information. The Association is also proposing to create a new Rule 9540 Series that would apply to those who fail to provide the Association with information, required filings, or keep membership applications or supporting documents current.

Under the proposed NASD Rule 9540 Series, the Association would send notices information respondents that failure to provide the Association with previously requested information or required filings or the failure to keep its membership application or supporting documents current will result in suspensions, unless the information is provided to the Association within 20 days. Respondents would have five days to request a hearing to challenge a proposed suspension. These hearings would be conducted before three-member Hearing Panels, and the Hearing Panels would have the authority to order any fitting sanctions, including expulsions and bars. Respondents who fail to request a hearing to challenge the suspension during the six-month period following the receipt of a notice initiating proceedings under this rule series will be automatically barred or expelled.

[6] A member firm is required to file an MC–400 application under NASD Eligibility Rules when the firm sponsors the association of a person subject to disqualification. Telephone conversation between Bradford Ali, Attorney, NASDR, and Anitra Cassas, Attorney, Commission, on July 19, 2000.

[7] 17 CFR 240.19h–1.

Further, the Association is proposing to include in the proposed NASD Rule 9540 Series a process by which the Department of Member Regulation could quickly cancel the memberships of firms that fail to meet the Association's eligibility and qualification standards set forth in Article III of the Association's By-Laws. Under the proposal, the Association would send letters to members informing them that their memberships will be canceled within 20 days of receipt of the letters, unless the firm becomes eligible for continuance in membership within this time period. The members will be provided opportunities to request hearings within five days of service of the notices to challenge the proposed cancellations. The hearings would be held before Hearing Officers.

Miscellaneous Technical Revisions

1. Market Regulation's Role in Disciplinary Process

The Department of Market Regulation represents NASD Regulation under a delegation of authority from the Department of Enforcement, as stated in NASD Rule 9120(e). The Association is proposing amending the Code to clarify the Department of Market Regulation's role in the disciplinary process.

2. Service Of Papers—Address Changes

The Association is proposing to modify NASD Rule 9134(b)(1) to permit adjudicators to waive the requirement to send papers to CRD addresses when they are no longer valid, and there is a more current address available. This change would only relate to documents served on respondents after complaints have been served.

Further, the Association is proposing to amend NASD Rule 9135(a) to clarify that complaints shall be deemed timely filed so long as they are either mailed or delivered to the Office of Hearing Officers within the two-year jurisdictional period, as outlined in the By-Laws.

3. Remand Cases

The Association is proposing to amend NASD Rules 9344 and 9349 to clarify that the Review Subcommittee, in addition to NAC, may remand disciplinary cases to Hearing Panels.

4. Briefing Schedules

The Association is proposing to amend NASD Rule 9347(b) to clarify that the time periods listed in the rule are only applicable to the principle briefing schedule and not applicable to the briefing of subsequent collateral issues.[8]

II. Comments and Responses

The Commission received one comment letter regarding the proposed rule change, which objected to the proposed amendments to NASD Rule 9253.[9] The commenter contends that under proposed changes to NASD Rule 9253, when the SRO decides not to call a SRO staff member as a witness during a hearing, any exculpatory interviews the staff member conducted would become unavailable to the defense. The commenter stated that the effect of the proposed rule change would, therefore, allow SROs to deliberately conceal exculpatory evidence.

The NASD responded that under NASD Rule 9251(b)(2), the NASD Regulation staff may not withhold any material exculpatory evidence.[10] Thus, the proposed changes would not change the Association's obligation to produce material exculpatory information. NASD Regulation continues to believe that the proposal is an appropriate and reasonable resolution of the issues.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the Act, and the rules and regulations thereunder applicable to a national securities association.[11] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Sections 15A(b)(2), 15A(b)(6), 15A(b)(7), and 15A(b)(8) of the Act, as described below.[12] It also continues to preserve the independence of the regulatory staff of the NASD and the NASDR.[13]

Section 15A(b)(2) requires national securities associations to have the capacity to enforce compliance by their members and persons associated with members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the association.[14] Several of the provisions of the proposed rule change modify the disciplinary procedures of the Association to enhance its membership oversight capabilities. For example, the Commission believes that proposed NASD Rule 3121, which requires members to designate associated persons as the custodians of record on the Form BDW, may enhance the Association's capacity to enforce compliance by allowing the Association to more easily obtain records from their members. Further, the clarification, simplification and consolidation of the procedures in the NASD Rule 8220 Series, 9410 Series, 9510 Series, and 9520 Series further the Association's ability to effectively and expeditiously conduct these disciplinary proceedings.

In addition, the creation of the 9540 series enhances the Association's capacity and authority to enforce its rules. This series creates a more streamlined disciplinary procedure for those members and associated persons who fail to provide the Association with certain information, and for those firms that fail to meet the Association's eligibility and qualification standards eligibility and qualification standards set forth in Article III of the Association's By-Laws.

The Commission further finds that the proposed rule change is consistent with Section 15A(b)(6), which provides, among other things, that the rules of the Association must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest.[15] The creation of the NASD Rule 9540 Series, in particular, should enhance investor protection by allowing the Association to promptly cancel the membership of firms that fail to meet the Association's eligibility and qualification standards, such as a member firm that is not conducting a securities business.[16] At the same time, members will have an opportunity for a hearing to challenge the Association's determinations.

Section 15A(b)(7) requires that members and persons associated with members be appropriately disciplined for violation of any provision of the Act, the rules and regulations thereunder, the rules of the Municipal Securities

[8] The briefing schedule for any subsequent collateral issues is set by the Association staff on behalf of the Hearing Subcommittee. Telephone conversation between Shirley Weiss, Associate General Counsel, NASDR, and Anitra Cassas, Attorney, Commission, on July 19, 2000.

[9] *See supra* note 5.

[10] *See* Letter from Alden S. Adkins, General Counsel and Senior Vice President, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated June 28, 2000.

[11] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78o–3(b)(2); 15 U.S.C. 78o–3(b)(6); 15 U.S.C. 78o–3(b)(7); and 15 U.S.C. 78o–3(b)(8).

[13] *See* Commission's Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 37538 (August 8, 1996).

[14] 15 U.S.C. 78o–3(b)(2).

[15] 15 U.S.C. 78o(b)(6).

[16] *See* Article II, Section 1(a) of the Association's By-Laws.

Rulemaking Board, or the rules of the association.[17] The Commission finds that the revisions to the Rule 8220 Series, which address the procedure for initiating disciplinary proceedings against a member for failing to provide requested information, provide an appropriate mechanism for disciplining members. Similarly, the creation of the NASD 9540 Series also provides for the appropriate discipline of members who fail to provide the Association with certain information or who fail to meet the Association's eligibility and qualification standards.

The Commission also finds that the proposed rule change is consistent with Section 15A(b)(8) of the Act, which requires that the rules of the association provide a fair procedure for the disciplining of members and persons associated with members.[18] For example, the provisions of the Rule 8220 Series have been revised to enhance the fairness of the disciplinary procedure. The Association has limited the use of the Rule 8220 proceedings to address only the most serious on-going violations, and has further limited the available sanctions to suspensions.

The Commission also finds that amendments to NASD Rule 9214, which authorizes the Chief Hearing Officer to sever disciplinary proceedings involving multiple respondents, are consistent with Section 15A(b)(8). In determining whether to order the severance, the Chief Hearing Officer must consider whether the same or similar evidence should be expected to be offered at each hearing, whether severance would conserve time and resources, and whether any party would suffer unfair prejudice. The Commission believes that this determination may result in a more timely and fair disciplinary procedure for all of the parties involved.

Proposed revisions to NASD Rule 9253 clarify that the only portions of routine examination or inspection reports, internal employee communications, and other internal documents that are required to be produced under the rule, are the portions outlining the substance of oral statements made by individuals who are not employees of the NASD when evidence of those statements are offered by NASD staff during disciplinary hearings.

One commenter expressed concern that the proposed changes to NASD Rule 9253 could make it more difficult for respondents to gain access to exculpatory information. However, the Commission notes that, under 9251(b)(2), the Association may not withhold material exculpatory evidence. Thus, the amendments to NASD Rule 9253 do not relieve the Association of the obligation to produce material exculpatory information. The Commission believes that the revised scope of document production still provides a fair procedure for disciplining members.

The Commission further finds that revisions to NASD Rule 9212 regarding amending complaints are consistent with the requirements of Section 15A(b)(8). The Association may need to amend complaints for a number of reasons, including adding respondents. Thus, the Association proposed to eliminate permitting amendments only for ''new matters of fact or law.'' The Commission believes that this should ensure a more fair procedure. The Commission notes, however, that the Association may only amend a complaint once as a matter of course, before a respondent answers to complaint. Thus, respondents will not be subject to unchecked delays caused by unlimited amendments.

The Commission believes that the amendments to NASD Rule 9264 may promote fairness of disciplinary procedures by expediting hearings. Permitting parties to move to summarily dispose of issues that do not involve entire ''causes of actions,'' and authorizing Hearing Officers to grant motions on jurisdictional issues without referring the matter to the full panel, may allow the proceedings to conclude in a more timely manner.

Similarly, the amendments to NASD Rules 9311 and 9312 may allow for a quicker resolution of the issues. Under the proposal, the General Counsel of NASD Regulation will be able to order parties to brief particular matters, without obtaining Review Subcommittee or NAC authorization. However, the Commission notes that the proposal also includes a process for parties to challenge the General Counsel's request for additional briefing.

The Commission finds that amendments to NASD Rule 9260, which governs default decisions, are also consistent with Section 15A(b)(8). The Hearing Officers who issue the default decision have the most familiarity with the issues. Thus, allowing these Hearing Officers to decide a motion to set aside the default decision, rather than referring the matter to NAC, should provide a more prompt resolution of the motion.

The Association made several revisions to the NASD Rule 9510 Series, which govern summary and non-summary proceedings. The amendments include: (1) A clarification that Hearing Officers have the same powers that they have in regular disciplinary proceedings (the Rule 9200 Series); (2) additional time to hold a hearing in non-summary proceedings; and (3) having appeals under NASD Rule 9516 be addressed by the Review Subcommittee of NAC rather than the NASD Board. The Commission believes that, consistent with Section 15A(b)(8), all of these amendments may promote more fair disciplinary proceedings. For example, the additional time for a hearing in non-summary proceedings should provide the Association and respondents with adequate time to prepare for hearings. The Commission notes that the additional time will not prejudice respondents because the suspension is not in effect during this time.

The Commission further finds that the proposed revisions to the NASD Rule 9520 series, which governs the process by which persons may become or remain associated with a member, and by which current members may obtain relief from the eligibility or qualification requirements, are consistent with Sections 15A(b)(8) and 19(d) of the Act. These revisions include: (1) Extending the time or waivers of time limitations for filing of papers or holding of hearings upon consent of all parties; (2) clarifying that the NASD's approval decisions are not effective until the Commission has either sent an acknowledgment letter to NASD Regulation or has entered an order in cases that involve a previously-entered SEC bar; (3) permitting members of the Statutory Disqualification Committee to serve on Hearing Panels; (4) providing that the CRD staff must gather all of the information necessary to process an application, that the CRD staff will prepare an index of these documents, and that the CRD will provide the index and copies of the documents to the various parties involved; (5) permitting members to submit a written request for relief, rather than an MC–400 application, in cases where the disqualified member is subject to an injunction that was entered 10 or more years prior to the proposed admission; and (6) permitting Member Regulation to recommend the membership or continuing membership of a disqualified member or sponsoring member, or association or continuing association of a disqualified person pursuant to a supervisory plan. The Commission believes that by simplifying and clarifying procedures for which persons may become or

[17] 15 U.S.C. 78o(b)(7).

[18] 15 U.S.C. 78o(b)(8).

remain associated with a member, and by which current members may obtain relief from the eligibility or qualification requirements, the Association is promoting fair disciplinary procedures.

Finally, the Commission finds that the amendments to the Code clarifying the NASD's Department of Market Regulation's role in the disciplinary process, the amendments to NASD Rule 9134(b) regarding service of papers on invalid addresses, the clarification to NASD Rules 9344 and 9340 regarding the ability of the Review Subcommittee to remand disciplinary cases to Hearing Panels, and the clarification to NASD Rule 9347(b) regarding briefing schedules are technical in nature, and, therefore, raise no new regulatory issues.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–99–76), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

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[19] 17 CFR 200.30-3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; New System of Records and New Routine Use Disclosures

AGENCY: Social Security Administration (SSA).

ACTION: New system of records and proposed new routine uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4)) and (e)(11)), we are issuing public notice of our intent to establish a new system of records entitled, the Social Security Administration's Talking and Listening to Customers (hereinafter referred to as TLC). The proposed TLC system will maintain information collected for use in connection with SSA's implementation of a process for capturing and addressing customer-initiated complaints, compliments, and suggestions.

The proposed new system of records will provide for routine use disclosures in connection with our administration of the Social Security Act, or as mandated by Federal law. We invite public comment on this proposal.

DATES: We filed a report of the proposed new system of records with the Chairman of the Senate Governmental Affairs Committee, the Chairman of the House Reform and Oversight Committee, the Director, Office of Information and Regulatory Affairs, and the Office of Management and Budget on July 24, 2000. The proposed system of records, including the proposed routine uses, will become effective on September 5, 2000, unless we receive comments that would warrant the system of records not being implemented.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Hazel Brodie, Social Insurance Policy Specialist, Social Security Administration, Room 3–C–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (410) 965–1744.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Proposed TLC System

On September 11, 1993, President Clinton issued Executive Order (EO) 12862, ''Setting Customer Service Standards.'' In part, EO 12862 states, ''Putting people first means ensuring that the Federal government provides the highest quality service possible to the American people.'' Toward this end, the EO further specifically requires agencies to ''make * * * complaint systems easily accessible'' and ''provide means to address customer complaints.''

Talking and Listening to Customers (TLC) is the Social Security Administration's (SSA) answer to this Executive mandate. TLC is an agency-wide automated process that will enable SSA to capture, analyze, and address spontaneous customer complaints, compliments, and suggestions. Through TLC, we will document customers' input on a wide range of issues, including programs, policy, law, and service. This information will enhance SSA's ability to track and address individual customer concerns, as well as provide data to support the Agency's business planning, policy development, communication strategies, and operational and service improvements.

SSA will test the new TLC process and automated system in all regions, including the Office of Hearings and Appeals (OHA) sites. Following the test period, we will evaluate the pilot based on customer and employee reaction as well as the automated system performance.

II. Collection, Maintenance, and Use of Data in the Proposed TLC System

We will obtain the information from our customers that will be maintained in the TLC automated system of records. The information will pertain to complaints, compliments, and suggestions our customers provide about Social Security programs, policies, laws, and service.

The information maintained in the TLC system will include (if given): Identifying information such as the customer's name, Social Security number (SSN), Employer Identification Number (EIN) and/or Claim Number, telephone number, address, and information relative to the content and disposition of their complaint, compliment, or suggestion.

If a third party provides the information, the TLC system will include data provided by the third party about the customer, such as the customer's name, SSN, EIN, and/or Claim Number, telephone number, addresses, and information relative to their complaint, compliment, or suggestion.

We will maintain and retrieve this information by our customer's SSN, EIN, and/or Claim Number, if given. Thus, the TLC system will constitute a system of records under the Privacy Act.

III. Proposed Routine Use Disclosures of Data That Will Be Maintained in the Proposed TLC System

We are proposing to establish routine uses of information that will be maintained in the proposed system as discussed below.

A. Disclosure to the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

We will disclose information under this routine use only in situations in which an individual may contact the Office of the President, seeking that office's assistance in a SSA matter on his or her behalf. Information would be disclosed when the Office of the President makes an inquiry and presents evidence that the office is acting on behalf of the individual whose record is requested.

B. Disclosure to a Congressional Office in response to an inquiry from that office made at the request of the subject of a record.