For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–44737; File No. SR–NASD–2001–49]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. To Extend the Expiration Date of Rules Concerning Bond Mutual Fund Volatility Ratings

August 22, 2001.

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 August 10, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by NASD Regulation. On August 16, 2001, NASD Regulation amended the proposal.[3] NASD Regulation filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[7] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* August 16, 2001 letter from Patrice M. Gliniecki, Vice President and Deputy General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC (''Amendment No. 1''). In Amendment No. 1, NASD Regulation (a) clarified that the trial period will be extended through August 31, 2003; (b) clarified that the trial period applies to Rule 2210(c)(3) as well as IM–2210–5; and (c) made technical, non-substantive changes to the proposal.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6). NASD Regulation provided written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, on August 1, 2001.

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

NASD Regulation proposes to amend Interpretive Material (''IM'') 2210–5 to extend the expiration date of IM–2210–5 and NASD Rule 2210(c)(3) from August 31, 2001 through August 31, 2003.[6] The text of the proposed rule change is below. Proposed new language is in italics. Proposed deletions are in brackets. IM–2210–5. Requirements for the Use of Bond Mutual Fund Volatility Ratings (This rule *and Rule 2210(c)(3)* will expire on August 31, [2001] *2003,* unless extended or permanently approved by the Association at or before such date.)

(a) No change.

(b) No change.

(c) No change.

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

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

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

1. Purpose

*Background and Description of the NASD's Rules on Bond Mutual Fund Volatility Ratings*

On February 29, 2000, the SEC approved the adoption of NASD IM–2210–5, which permits members and their associated persons to include bond fund volatility ratings in supplemental sale literature (mutual fund sales material that is accompanied or preceded by a fund prospectus).[7] The SEC also approved at that time, new NASD Rule 2210(c)(3), which sets forth the filing requirements and review procedures applicable to sales literature containing bond mutual fund volatility ratings. Previously, the NASD Regulation staff interpreted NASD rules to prohibit the use of bond fund volatility ratings in sales material.

[6] In Securities Exchange Act Release No. 42476 (February 29, 2000), 65 FR 12305 (March 8, 2000), the SEC approved IM–2210–5 and NASD Rule 2210(c)(3) on a trial basis. This proposal clarifies in the language of IM–2210–5 that the trial period applies to Rule 2210(c)(3) as well as IM–2210–5.

[7] *See* Securities Exchange Act Release No. 42476 (February 29, 2000), 65 FR 12305 (March 8, 2000) at 12306.

IM–2210–5 permits the use of bond fund volatility ratings only in supplemental sales literature and only if certain conditions are met:

- The word ''risk'' may not be used to describe the rating.
- The rating must be the most recent available and be current to the most recent calendar quarter ended prior to use.
- The rating must be based exclusively on objective, quantifiable factors.
- The entity issuing the rating must provide detailed disclosure on its rating methodology to investors through a toll-free telephone number, a web site, or both.
- A disclosure statement containing all of the information required by the rule must accompany the rating. The statement must include such information as the name of the entity issuing the rating, the most current rating and the date it was issued, and a description of the rating in narrative form containing certain specified disclosures.

Rule 2210(c)(3) requires members to file bond mutual fund sales literature that includes or incorporates volatility ratings with the Advertising Regulation Department of NASD Regulation (''Department'') at least 10 days prior to use for Department approval. If the Department requests changes to the material, the material must be withheld from publication or circulation until the requested changes have been made or the material has been refiled and approved.

IM–2210–5 and the new Rule 2210(c)(3) were approved on an 18-month trial basis, which trial period expires on August 31, 2001, unless extended or permanently approved by NASD Regulation at or before that date.

*Proposed Rule Change to Extend the Expiration Date of IM–2210–5 and to Clarify the Related Expiration Date of NASD Rule 2210(c)(3)*

As indicated in the SEC's order approving IM–2210–5 and Rule 2210(c)(3), NASD Regulation requested the 18-month trial period to provide an opportunity to assess whether the rule change had facilitated the dissemination of useful, understandable information to investors, and whether it had prevented the dissemination of inappropriate and misleading information.

As of July 2001, the Department had received only six filings pursuant to these provisions. In general, these filings met the requirements of IM–2210–5. However, the staff does not believe that it has received a sufficient number of filings to adequately evaluate the provisions' effectiveness. While there may be a number of reasons for the low number of filings, the staff believes that low investor demand for bond funds coupled with the strong promotion of equity mutual funds during much of the trial period may have contributed to the low level of filings. The staff believes that additional experience with these provisions is necessary to evaluate the effect on the delivery of accurate and useful information to investors concerning bond mutual fund volatility.

Accordingly, NASD Regulation is proposing to extend the expiration date of IM–2210–5 and Rule 2210(c)(3) for an additional two years, until August 31, 2003, to allow more filings to be made. Before this period expires, the staff will evaluate IM–2210–5 and Rule 2210(c)(3) and determine whether to recommend that they be eliminated, modified, or permanently approved as is. Further, NASD Regulation is proposing to amend IM–2210–5 to clarify that upon its expiration, Rule 2210(c)(3) will also expire.

2. Statutory Basis

Nasdaq believes that the proposed extension is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general to protect investors and the public interest. NASD Regulation believes that extending the expiration date of IM–2210–5 and Rule 2210(c)(3) will provide the additional experience necessary to filly analyze and evaluate the provisions.

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

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

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6)[10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

NASD Regulation has asked that the Commission accelerate the operative date. The Commission finds good cause to waive the 30-day operative waiting period, because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will ensure that the operation of the Rule will be uninterrupted by the expiration provision currently contained in IM–2210–5. For these reasons, the Commission finds good cause to waive the 30-day operative waiting period.[11]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to file number SR–NASD–2001–49 and should be submitted by September 18, 2001.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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[8] 15 U.S.C. 78o–3(b)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f). The NASD will announce the proposed rule change in a Notice To Members, to be published no later than 30 days after August 10, 2001, the date that NASD Regulation filed the proposed rule change.

[12] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–44727; File No. SR–OCC–2001–07]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Amendments and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Clearing Security Futures

August 20, 2001.

**I. Introduction**

On June 29, 2001, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–OCC–2001–07 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and on July 9,[2] August 13, and 17, 2001, amended the proposed rule change. Notice the proposal was published in the **Federal Register** on August 3, 2001.[3] No comment letters have been received to date. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

**II. Description**

*A. Introduction*

On June 15, 2001, the Commission approved amendments to OCC's By-Laws specifying the types of markets for which OCC would clear security futures and describing the general terms on which it would clear for those markets.[4] This order approves a comprehensive

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

[2] The purpose of the July 9 Amendment was to correct citations to the Act.

[3] Securities Exchange Act or Release No. 44610, (July 27, 2001), 66 FR 40766.

[4] Securities and Exchange Act Release No. 44434 (June 15, 2001), 66 FR 33283 [SR–OCC–2001–05].