

would be \$6.25 per day (25% of \$25 per day) for the first 90 days, and \$12.50 per day (25% of \$50 per day) thereafter.

Under these general guidelines, the total penalty for any violation would not exceed \$100 times the number of plan participants. In the above example, because the plan has 25 participants, the total penalty would not exceed \$2,500.

The PBGC may assess a penalty larger than the general penalty if there is a willful failure to comply (e.g., where a plan administrator willfully fails to issue a notice to participants required under section 4011 of ERISA) or if there is a pattern or practice of failure to provide material information. Similarly, the PBGC may assess a penalty larger than the general penalty if the harm to participants or the PBGC resulting from a failure to timely provide material information is substantial. For example, a larger penalty may apply where there is a failure to provide the PBGC with timely post-event notice of a reportable event involving a large company or plan or with annual information required by section 4010 of ERISA.

The PBGC will generally assess the full \$1,000 per day penalty for failure to provide an advance notice of a reportable event under ERISA section 4043(b) or a notice to the PBGC of a missed contribution under ERISA section 302(f)(4). This information is so time sensitive and significant that a larger penalty is warranted.

Reasonable Cause Guidelines

The PBGC will waive all or part of a section 4071 penalty where reasonable cause is shown. The PBGC will evaluate each request for a waiver to determine whether the responsible person exercised ordinary business care and prudence and delay resulted from circumstances beyond that person's control.

Other Matters

The PBGC will continue to review initial penalty assessments if requested in writing within 30 days of the date of the notice of initial penalty assessment. Assignment of penalty assessment and review functions remains unchanged.

Issued in Washington, DC, this 12th day of July 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35956; File No. SR-NASD-95-16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendment of the NASD Rules of Fair Practice Relating to a Customer Complaint Reporting Rule

July 11, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 6, 1995,¹ the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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 NASD is proposing to amend the NASD Rules of Fair Practice to require NASD members to report to the NASD the occurrence of certain specified events and quarterly summary statistics concerning customer complaints. Below is the text of the proposed rule change. Proposed new language is italicized and deleted language is bracketed.

Rules of Fair Practice

Article III

Reporting Requirements Section

(a) *Each member shall promptly report to the Association whenever such member or person associated with the member:*

(1) has been found to have violated any provision of any securities law or regulation, any rule or standards of conduct of any governmental agency, self-regulatory organization, or financial business or professional organization, or engaged in conduct which is inconsistent with just and equitable

¹ The proposed rule change was initially submitted on May 1, 1995, but was amended twice prior to publication of this Notice; once on May 25, 1995, and again on July 6, 1995. The first amendment was a technical amendment intended to clarify the scope of the rule change. The second amendment added a time frame within which members would be responsible to report certain information. Both amendments are incorporated herein and are available for copying in the Commission's Public Reference Room.

principles of trade; and the member knows or should have known that any of the aforementioned events have occurred;

(2) is the subject of any written customer complaint involving allegations of theft or misappropriation of funds or securities or of forgery;

(3) is named as a defendant or respondent in any proceeding brought by a regulatory or self-regulatory body alleging the violation of any provision of the Securities Exchange Act of 1934, or of any other federal or state securities, insurance, or commodities statute, or of any rule or regulation thereunder, or of any provision of the By-laws, rules or similar governing instruments of any securities, insurance or commodities regulatory or self-regulatory organization;

(4) is denied registration or is expelled, enjoined, directed to cease and desist, suspended or otherwise disciplined by any securities, insurance or commodities industry regulatory or self-regulatory organization or is denied membership or continued membership in any such self-regulatory organization; or is barred from becoming associated with any member of any such self-regulatory organization;

(5) is indicted, or convicted of, or pleads guilty to, or pleads no contest to, any criminal offense (other than traffic violations);

(6) is a director, controlling stockholder, partner, officer or sole proprietor of, or an associated person with, a broker, dealer, investment company, investment advisor, underwriter or insurance company which was suspended, expelled or had its registration denied or revoked by any agency, jurisdiction or organization or is associated in such a capacity with a bank, trust company or other financial institution which was convicted of or pleaded no contest to, any felony or misdemeanor;

(7) is a defendant or respondent in any securities or commodities-related civil litigation or arbitration which has been disposed of by judgement, award, or settlement for an amount exceeding \$15,000. However, when the member is the defendant or respondent, then the reporting to the Association shall be required only when such judgement, award, or settlement is for an amount exceeding \$25,000;

(8) is the subject of any claim for damages by a customer, broker, or dealer which is settled for an amount exceeding \$15,000. However, when the claim for damages is against a member, then the reporting to the Association shall be required only when such claim