

NRC/nucmat.html) approximately 4 weeks after the publication date of this notice.

Dated at Rockville, Maryland, this 30th day of November, 1998.

For the Nuclear Regulatory Commission.

Donald A. Cool,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98-32394 Filed 12-4-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Unity Bancorp, Inc., Common Stock, No Par Value) File No. 1-12431

December 1, 1998.

Unity Bancorp, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

On August 20, 1998, the Board of Directors of the Company unanimously approved a resolution to withdraw the Company's Security from trading on the Exchange and to list the Security on the Nasdaq. In making the decision to withdraw its Security from listing on the Exchange, the Company considered the direct and indirect costs and benefits involved and determined that trading on the Nasdaq better suited its needs. Trading in the Company's Security on the Nasdaq commenced at the opening of business on September 21, 1998.

The Company has complied with Rule 18 of the Amex by notifying Amex of its intention to withdraw its Security from listing on the Exchange by letter dated August 24, 1998, and by filing a copy of the resolution with the Exchange. The Exchange replied by letter dated August 26, 1998, advising that the Exchange would not interpose any objection to such action, nor require the Company to send common stockholders any statement with respect thereto.

The Company also originally intended to delist its Common Stock Purchase

Warrants ("Warrants") from Amex and to list the Warrants on Nasdaq. The Warrants, however, did not meet the Nasdaq's float requirement and the Company elected to keep the Warrants on the Amex. By letter dated September 14, 1998, the Amex consented to this procedure.

Any interested person may, on or before December 22, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 98-32380 Filed 12-4-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40723; File No. SR-NASD-98-52]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change Relating to Supervision of Correspondence

November 30, 1998.

I. Introduction

On July 24, 1998, the National Association of Securities Dealers, Inc. ("NASD") or "Association"), through its wholly-owned subsidiary, the NASD Regulation, Inc. ("NASDR"), submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NASD Rule 3010 to state that firms must review incoming, written

correspondence to identify customer complaints and funds. On August 26, 1998, the NASDR submitted Amendment No. 1 to the proposed rule change.³

The proposed rule change, as amended, was published for comment in the **Federal Register** on September 3, 1998.⁴ Four comment letters were received on the proposal.⁵ On November 12, 1998, the NASDR filed Amendment No. 2 to the proposed rule change.⁶ The Commission solicits comments on Amendment No. 2 from interested persons. This order approves the proposed rule change and Amendment No. 1 thereto and approves Amendment No. 2 to the proposed rule change on an accelerated basis.

II. Background and Description of the Proposal

In December 1997, the SEC approved rule amendments and a Notice to Members that were designed to allow firms to develop flexible supervisory procedures for the review of correspondence with the public.⁷ The amendments were intended to recognize the growing use of electronic communications such as "e-mail" while still providing for effective supervision. Notice to Members 98-11, issued by the

³ See Letter from Mary N. Revell, Associate General Counsel, NASDR, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 24, 1998 ("Amendment No. 1"). In Amendment No. 1, NASDR proposes to replace the word "should" in the text of the proposed rule with the word "must."

⁴ See Securities Exchange Act Release No. 40372 (August 27, 1998), 63 FR 47059.

⁵ See Letters to Jonathan G. Katz, Secretary, Commission, from Michael L. Kerley, Vice President and Chief Legal Officer, MML Investors Services, Inc., dated September 18, 1998 ("MML Letter"); Theodore A. Mathas, President NYLIFE Securities, dated September 23, 1998 ("NYLSEC Letter"); Janet G. McCallen, Executive Director, International Association for Financial Planning, dated September 23, 1998 ("IAFP Letter"); and Joseph P. Savage, Assistant Counsel, Investment Company Institute, dated September 24, 1998 ("ICI Letter").

⁶ See Letter from Mary N. Revell, Associate General Counsel, NASDR, to Katherine A. England, Assistant Director, Division, Commission, dated November 12, 1998 (Amendment No. 2). In Amendment No. 2, in addition to making several technical amendments, the NASDR addresses the issues raised in the comment letters. The NASDR proposes to revise its draft Notice to Members to clarify that: (1) registered representatives can forward opened mail; (2) maintenance of a log should be only for "securities" products; and (3) customers should be informed that they can contact a central office of the member firm for any reason, including to file a complaint. The NASDR also proposes to specifically state that member firms have a legal right to review incoming, written correspondence. Finally, the NASDR proposes to change the effective date of the new amendments to 60 days following publication of its Notice to Members.

⁷ See Securities Exchange Act Release No. 39510 (December 31, 1997) 63 FR 1131 (January 8, 1998).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

NASD in January 1998, announced approval of the rule amendments, the effective date of the new rules, and provided guidance to firms on how to implement these rules. Subsequent to Commission approval of the amendments, but before the amended rules went into effect, the Commission received 14 comment letters, primarily from members in the insurance industry, objecting to certain provisions in the new rules.⁸ The commenters primarily objected to a provision in Notice to Member 98-11 which states that firms will be required to review all incoming, written correspondence directed to registered representatives and related to a member's investment banking or securities business. The NASDR added this provision to Notice to Members 98-11 to address two regulatory concerns raised by the Commission: (1) ensuring that firms capture all customer complaints; and (2) preventing registered representatives from taking cash or checks out of customer letters.

The commenters stated that it would be very difficult or impossible for a registered principal to conduct a pre-distribution review of all incoming, written correspondence, particularly correspondence received by registered representatives in small, one- or two-person offices. In response to these concerns, the effective date of the requirement to review all incoming, written correspondence was delayed to allow the NASDR and member firms time to develop and implement alternative, workable procedures for the review of incoming, written correspondence that addresses the regulatory concerns about preventing misappropriation of customer funds and diversion of customer complaints.⁹ The

rule amendments and all other provisions in the Notice became effective on April 7, 1998.¹⁰

NASDR Rule 3010(d)(2) currently requires each member to develop written policies and procedures for review of correspondence with the public relating to its investment banking or securities business tailored to its structure and the nature and size of its business and customers. The NASDR proposes to amend the rule to state that these procedures must include review of incoming, written correspondence directed to registered representatives and related to the member's investment banking or securities business to properly identify and handle customer complaints, funds, and securities. This proposed amendment will clarify that firms must develop supervisory procedures that specifically address the regulatory concerns identified by the Commission.

The accompanying Notice to Members will provide guidance on how to implement the proposed rule change.¹¹ In particular, the Notice states that, in conducting reviews of incoming, written correspondence to identify customer complaints and funds, where the office structure permits review of all correspondence, members should designate a registered or associated person to open and review correspondence prior to use or distribution to identify customer complaints and funds. The designated person must not be supervised or under the control of the registered person whose correspondence is opened and reviewed. Unregistered persons who have received sufficient training to enable them to identify complaints and checks would be permitted to review correspondence.

Where the office structure does not permit the review of correspondence prior to use or distribution, the Notice states that the firm would have to employ alternative procedures reasonably designed to assure adequate handling of complaints and checks. Procedures that could be adopted include the following:

- After opening his or her own mail, the registered representative can forward incoming, written correspondence related to the firm's

investment banking or securities business to an Office of Supervisory Jurisdiction (OSJ) or a branch manager for review on a weekly basis;

- Maintenance of a separate log for all checks received and securities products sold, which is forwarded to the supervising branch on a weekly basis;
- Communication to clients that they can contact the broker/dealer directly for any matter, including the filing of a complaint and provides them with an address and phone number of a central office of the broker/dealer for this purpose; and
- Branch examination verification that the procedures are being followed.

The Notice also states that, regardless of the method used for initial review of incoming, written correspondence, as with other types of correspondence, Rule 3010(d)(1) would still require review by a registered principal of some of each registered representative's correspondence with the public relating to the member's investment banking or securities business.

III. Summary of Comments

The Commission received four comment letters on the proposed rule change.¹² Two of the commenters generally opposed the proposal;¹³ two of the commenters generally supported the proposal.¹⁴ The commenters opposing the proposal believe that any possible benefits of the proposal are outweighed by the associated burdens.¹⁵ Specifically, the proposal's opponents believe that even if a member firm's business structure permits the review of incoming, written correspondence prior to use or distribution, NASD Rule 3010 should not require such review.¹⁶ Instead, member firms should be permitted the flexibility to design their own procedures to identify customer complaints and funds.¹⁷ The NASDR has not modified its proposal in response to these comments.

One commenter also recommends that NASDR should eliminate the "requirements" to forward correspondence and logs to a reviewer on a weekly basis and instead, to permit review on a regular basis.¹⁸ In response, the NASDR notes that its proposed Notice to Members does not establish "requirements" for those member firms with office structures that do not permit

⁸ See Letters to Jonathan G. Katz, Secretary, Commission, from Carl B. Wilkerson, American Council of Life Insurance, dated January 9, 1998 and January 29, 1998; Beverly A. Byrne, BenefitsCorp Equities, Inc., dated January 26, 1998; Michael S. Martin, The Equitable Life Assurance Society of the United States, dated January 29, 1998; Janet G. McCallen, International Association for Financial Planning, dated February 13, 1998; W. Thomas Boulter, Jefferson Pilot Financial, dated January 28, 1998; Leonard M. Bakal, Metropolitan Life Insurance Company and MetLife Securities, Inc., dated January 28, 1998; Michael L. Kerley, MML Investors Services, Inc. dated January 26, 1998; Mark D. Johnson, The National Association of Life Underwriters, dated February 5, 1998; Theodore Mathas, NYLIFE Securities, dated January 16, 1998 and January 29, 1998; Beverly A. Byrne, One Orchard Equities, Inc., dated January 26, 1998; Dodie Kent, Pruco Securities Corporation, dated January 29, 1998; and James T. Bruce, Wiley, Rein & Fielding, on behalf of the Electronic Messaging Association, dated January 30, 1998.

² See Securities Exchange Act Release Nos. 39665 (February 13, 1998) 63 FR 9032 (February 23, 1998); 39866 (April 14, 1998) 63 FR 19778 (April 21,

1998); and 40178 (July 7, 1998) 63 FR 37911 (July 14, 1998).

¹⁰ See Securities Exchange Act Release No. 39866, *supra* note 9.

¹¹ The Notice that will be issued when this proposed rule is approved will state that the requirement set forth in Notice to Members 98-11 is no longer applicable and has been superseded by the amendment to Rule 3010(d)(2) and the guidance provided in the Notice.

¹² See note 5, *supra*.

¹³ See NYLSEC Letter and ICI Letter, *supra* note 5.

¹⁴ See MML Letter and IAFP Letter, *supra* note 5.

¹⁵ See NYLSEC Letter and ICI Letter, *supra* note 5.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See NYLSEC Letter, *supra* note 5.

review of all incoming correspondence.¹⁹ Instead, the proposed Notice to Members provides several examples of alternative procedures that member firms might employ to assure adequate handling of customer complaints and funds.

One commenter requests that if the proposal is adopted, the effective date of the amendments should be postponed for six months to provide member firms with sufficient time to implement the additional requirements.²⁰ The NASDR declines to postpone the effective date of the amendments for six months, noting that member firms have been on notice since the issuance of NASD's Notice to Members 98-11 in January 1998 that some type of review of incoming, written correspondence would be required. To provide member firms with some time to implement the required changes, the NASDR proposes to change the effective date of the new amendments to 60 days following publication of the Notice to Members announcing Commission approval of the proposal.²¹

In addition, one commenter suggests that the rule specify that if a member firm doesn't normally receive written correspondence directed to register representatives, the member should not have to develop procedures to address such correspondence.²² The NASDR has not modified its proposal in response to this comment.

One commenter requests that the NASDR specifically state that member firms have a legal right to review incoming mail, to parallel a similar statement made by the New York Stock Exchange.²³ In response, the NASDR proposes to revise its draft Notice to Members to include such a statement.²⁴

Another commenter recommends that the NASDR clarify in the examples provided in its Notice to Members that: (1) Registered representatives can forward opened mail; (2) maintenance of a log should be only for "securities" products; and (3) customers should be informed that they can contact a central office of the member firm for any reason, including to file a complaint.²⁵ The NASDR proposes to revise its draft Notice to Members to implement the commenter's recommendations.²⁶

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.²⁷ Specifically, the Commission believes the proposal is consistent with the requirements of Section 15A(b)(6) of the Act²⁸ in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. The Commission believes that the proposal, which clarifies member firms' responsibilities with respect to the review of incoming, written correspondence, is designed to protect existing and prospective customers by ensuring that customer complaints and customer funds and securities are handled properly.

The NASDR proposes to amend NASD Rule 3010 to require that member firms' written procedures regarding the review of correspondence must include a review of incoming, written correspondence directed to registered representatives to properly identify and handle customer complaints and to ensure that customer funds and securities are handled in accordance with firm procedures. In its draft Notice to Members, the NASDR explains that the method used in conducting such reviews will depend on the firm's particular office structure. Where the office structure permits review of all correspondence, the NASDR will require that member firms designate an individual to open and review such correspondence prior to use or distribution to identify customer complaints and funds. The Commission agrees that wherever practicable, prior review of incoming, written correspondence should be mandated, to protect customer interests and possibly, reduce member firms' potential liability.

The Commission recognizes, however, that there may be circumstances in which such prior review of incoming, written correspondence is not practical. In such cases, the Commission believes that the NASDR's proposal to require member firms to employ alternative procedures reasonable designed to assure adequate handling of customer complaints, funds, and securities is reasonable. The Commission believes that member firms that do not require prior review of all incoming, written correspondence should require, at a

minimum, some combination of those alternative procedures provided by the NASDR as an example, or similar procedures, rather than relying on only one alternative procedure. The Commission believes that employing more than one alternative procedure should serve to provide additional assurances that incoming, written correspondence is handled appropriately.

The Commission notes that the proposal requires the review by a registered principal of some of each registered representative's correspondence with the public relating to the member firm's investment banking or securities business, regardless of the method used for the initial review of incoming, written correspondence. The Commission believes that this requirement should ensure that appropriate persons within the firm will undertake to supervise the activities of the firm's registered representatives. The Commission expects that in the event that the firm learns of any suspect activities on the part of any of its registered representatives, the firm will commence a more thorough review of that representative's activities, including his/her correspondence with the public.

The Commission finds good cause for approving proposed Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In Amendment No. 2, the NASDR addresses the concerns raised in the four comment letters received by the Commission on this proposal. Amendment No. 2 modifies the original filing and the accompanying draft Notice to Members only slightly, in response to specific comments raised by interested parties. Specifically, Amendment No. 2 clarifies that member firms have the legal right to review incoming written correspondence and that the rules apply to the member firms' investment banking and securities business. As the modifications proposed in Amendment No. 2 are reasonable and do not significantly alter the original proposal, the Commission believes that Amendment No. 2 raises no issues of regulatory concern. Accordingly, the Commission believes that it is consistent with Section 15A(b)(6) of the Act²⁹ to approve Amendment No. 2 to the proposed rule change on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and

¹⁹ See Amendment No. 2, *supra* note 6.

²⁰ See NYLSEC Letter, *supra* note 5.

²¹ See Amendment No. 2, *supra* note 6.

²² See ICI Letter, *supra* note 5.

²³ See MML Letter, *supra* note 5.

²⁴ See Amendment No. 2, *supra* note 6.

²⁵ See IAFP Letter, *supra* note 5.

²⁶ See Amendment No. 2, *supra* note 6.

²⁷ In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²⁸ 15 U.S.C. 78o-3(b)(6).

²⁹ 15 U.S.C. 78o-3(b)(6).

arguments concerning Amendment No. 2, including whether Amendment No. 2 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. 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, 450 Fifth Street, NW, Washington, DC 20549. Copies of all such filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-98-52 and should be submitted by December 28, 1998.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³⁰ that the proposed rule change (SR-NASD-98-52), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³¹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-32400 Filed 12-4-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40718; File No. SR-NASD-98-96]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Correcting Cross-References in Rules to NASD By-Laws

November 30, 1998.

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 19, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-

owned regulatory subsidiary, NASD Regulation, Inc. ("NASD Regulation"), 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 by NASD Regulation. 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

NASD Regulation is proposing to correct cross-references in the NASD Rules to the NASD By-Laws. The text of the proposed rule change is set forth below. Proposed new language is italicized; proposed deletions are in brackets.

Rule 0112. Effective Date

The Rules shall become effective as provided in Section 1 of Article [XII] *XI* of the By-Laws.

Rule 0120. Definitions

* * * * *

(i) "Member"

The term "member" means any individual, partnership, corporation or other legal entity admitted to membership in the Association under the provisions of Articles [II and] III *and IV* of the By-Laws.

* * * * *

Rule 1060. Persons Exempt from Registration

(a) No change.

(b) No change.

(1) the member firm has assured itself that the nonregistered foreign person who will receive the compensation (the "finder") is not required to register in the U.S. as a broker/dealer nor is subject to a disqualification as defined in Article [II] *III*, Section 4 of the Association's By-Laws, and has further assured itself that the compensation arrangement does not violate applicable foreign law;

* * * * *

Rule 1100. Foreign Associates

(a) No change.

(b) No change.

(1) Such person is not subject to any of the prohibitions to registration with the Association contained in Article [II] *III*, Section 4 of the By-Laws of the Association.

* * * * *

(c) In the event of the termination of the employment of a Foreign Associate, the member must notify the Association immediately by filing a notice of

termination as required by Article [IV] V, Section 3 of the By-Laws.

* * * * *

IM-2110-4. Trading Ahead of Research Reports

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In accordance with Article VII, Section 1(a)[(2)](ii) of the NASD By-Laws, the Association's Board of Governors has approved the following interpretation of Rule 2110.

* * * * *

IM-2210-4. Limitations on Use of Association's Name

(a) Use of Association Name

Members may indicate membership in the Association in conformity with Article [XVI] *XV*, Section 2 of the NASD By-Laws in one or more of the following ways:

* * * * *

IM-2420-1. Transactions Between Members and Non-Members¹

(a) Non-members of the Association.

* * * * *

(4) Broker or Dealer Registration Revoked by SEC

Revocation by the Commission of an Association member's registration as a broker or dealer automatically terminates the membership of such broker or dealer in the Association as of the effective date of such order. Under Article [II] *III*, Section 4 of the By-Laws of the Corporation, a firm whose registration as a broker or dealer is revoked is thereby disqualified for membership in the Association, and from the effective date of such order, the membership of such broker or dealer in the Association is discontinued. Thereafter such broker or dealer is a non-member of the Association.

(5) Membership Resigned or Canceled

The membership of a broker or dealer in the Association is automatically terminated when the Association accepts the resignation of such member or cancels its membership in the Association under the provisions of Article [II] *III*, Section 3; Article [III] *IV*, Section 5; or Article [XIV] *XIII*, Section 1, of the By-Laws. After the date of acceptance by the Association of the resignation of such member or the date of cancellation of membership by the Association, such broker or dealer is a non-member of the Association.

* * * * *

IM-2420-2. Continuing Commissions Policy

* * * * *

¹ Text of note unchanged.

³⁰ 15 U.S.C. 78s(b)(2).

³¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.