

Special NASD Notice to Members 99-52

Mail Vote—NASD Solicits
Vote On Amendments To
NASD By-Laws To The
Associated Person
Definition; **Last Voting
Date: July 16, 1999**

Suggested Routing

- ☒ Senior Management
- ☐ Advertising
- ☐ Continuing Education
- ☐ Corporate Finance
- ☐ Executive Representatives
- ☐ Government Securities
- ☐ Institutional
- ☐ Insurance
- ☐ Internal Audit
- ☒ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ☐ Operations
- ☐ Options
- ☐ Registered Representatives
- ☒ Registration
- ☐ Research
- ☐ Syndicate
- ☐ Systems
- ☐ Trading
- ☐ Training
- ☐ Variable Contracts

Executive Summary

The National Association of Securities Dealers, Inc. (NASD®) invites members to vote to approve the following amendments to the NASD By-Laws: amend the definition of "person associated with a member" to include persons who have applied for registration and, for purposes of Rule 8210, certain persons who have ownership interests in NASD members. The last voting date is July 16, 1999. The text of the proposed amendments follows this *Notice*.

Questions concerning this *Notice* may be directed to Mary M. Dunbar, Assistant General Counsel, Office of General Counsel, NASD Regulation, Inc. (NASD Regulation®), at (202) 728-8252.

Background And Discussion

The NASD Board of Governors (the Board) recommends two minor amendments to the definition of the term "person associated with a member" in Article I of the NASD By-Laws. The term is currently defined to include:

(1) a natural person registered under the Rules of the Association; or

(2) a sole proprietor, partner, officer, director, or branch manager of a member, or a natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the NASD under these By-Laws or the Rules of the Association.

At least two issues have arisen with respect to the definition. The first issue is whether the definition should

be expanded modestly to apply to certain owners of members. Currently, the definition only includes owners who are natural persons engaged in the member's investment banking or securities business **and** who have a direct or indirect control relationship with the member. The By-Laws do not define the term "control."¹

While the Board does not believe that the definition of associated person should include all owners and thereby subject them to all NASD rules, the Board would like to expand the definition minimally to give the staff authority to direct a request for information under Rule 8210 (the Rule) to any person – including a natural person or corporate or other entity – who holds a five percent or greater interest in a member firm, regardless of whether they "control" the member firm or are actively engaged in its securities or investment banking business. Such persons are easily identified because members must list them in Schedule A of Form BD, which is filed with the NASD and the Securities and Exchange Commission. For example, if the member is a corporation, the member generally must list each shareholder that directly owns five percent or more of a class of a voting security of the broker/dealer. If the member is a partnership, the member must list all general partners and those limited and special partners that have contributed, or have the right to receive upon dissolution, five percent or more of the partnership's capital. Members have a continuing obligation to update Schedule A.

The Board is not recommending any change to the Rule itself, which is one of the staff's primary tools for carrying out its regulatory responsibilities. The Rule authorizes the staff, for the purpose of an investigation, complaint, examination, or proceeding authorized by the NASD By-Laws or

rules, to require a member or associated person to provide information or testimony. The Rule also authorizes the staff to inspect and copy the books, records, and accounts of such member or person with respect to any matter involved in the investigation, complaint, examination, or proceeding. The proposed amendment to the definition of associated person represents an incremental change that would permit the staff to direct a Rule 8210 request to any owner – individual, corporate, partnership, trust, or otherwise – listed in Schedule A of Form BD, whether or not such owner controls the member firm. The Board does not believe that it is necessary at this time to apply any other NASD rules to this group of owners or to amend Rule 8210.

The second issue involves an anomaly between the By-Law definition of the term “associated person” and the Form U-4, which is the application form for registration that must be signed by the prospective registered person. The Form U-4 states that by signing the Form, the applicant is subject to the jurisdiction of the NASD and any state in which he/she is applying for registration. However, the current

By-Law does not expressly address applicants for registration. The Board recommends that the By-Law should be made expressly consistent with the Form U-4 in this respect.

Text Of The Proposed Amendments

(Note: New language is underlined; deletions are bracketed.)

By-Laws Of The NASD, Article 1

(a) – (dd) No Change

(ee) “person associated with a member” or “associated person of a member” means:

(1) a natural person who is registered or has applied for registration under the Rules of the Association; [or]

(2) a sole proprietor, partner, officer, director, or branch manager of a member, or [a] other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly

controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the NASD under these By-Laws or the Rules of the Association; and

(3) for purposes of Rule 8210, any other person listed in Schedule A of Form BD of a member;

(ff) – (mm) No Change

Endnote

¹The Form BD defines “control” as the “power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that ... directly or indirectly has the right to vote 25% or more of a class of a voting securities or has the power to sell or direct the sale of 25% or more of a class of voting securities; or ... in the case of a partnership, has the right to receive upon dissolution, or has contributed 25% or more of the capital, is presumed to control that company.”

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