

June 20, 2000

Katherine A. England  
Assistant Director  
Division of Market Regulation  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549-1001  
Mail Stop 10-1

Re: **File No. SR-NASD-00-39**-Amendment to Schedule A of the NASD By-Laws for the Timely Filing of Reports, and Amendments to IM-9216, Minor Rule Violation Plan

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed herewith is the above-numbered rule filing. Also enclosed is a 3-1/2" disk containing the rule filing in Microsoft Word 7.0 to facilitate production of the Federal Register release.

If you have any questions, please contact Gregory Dean, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8159; e-mail [gregory.dean@nasd.com](mailto:gregory.dean@nasd.com). The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Alden S. Adkins  
Senior Vice President  
and General Counsel

Attachment

**SECURITIES AND EXCHANGE COMMISSION**

Washington, D. C.

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Form 19b-4

Proposed Rule Change

by

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

Pursuant to Rule 19b-4 under the  
Securities Exchange Act of 1934

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”), the National Association of Securities Dealers, Inc. (“NASD” or “Association”), through its wholly owned subsidiary, NASD Regulation, Inc. (“NASD Regulation”), is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend Schedule A of the NASD By-Laws for the timely filing of reports and to amend NASD IM-9216 to expand the NASD’s Minor Rule Violation Plan pursuant to SEC Rule 19d-1. Below is the text of the proposed rule and the proposed rule changes. Proposed new language is underlined; proposed deletions are in brackets.

\* \* \*

**Schedule A to the NASD By-Laws**

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of the NASD shall be determined on the following basis:

\* \* \*

**Section 2-Fees**

(a) through (k) No Change.

(l) (1) Unless a specific temporary extension of time has been granted, there shall be imposed upon each member required to file reports, as designated by this paragraph, a fee of \$100 for each day that such report is not timely filed. The fee will be assessed for a period not to exceed 10 business days. Requests for such extension of time must be submitted to the Association at least three business days prior to the due date.

(2) Any report filed pursuant to this Rule containing material inaccuracies or filed incompletely shall be deemed not to have been filed until a corrected copy of the report has been resubmitted.

(3) List of Designated Reports:

(A) SEC Rule 17a-5 -Monthly and quarterly FOCUS reports and annual audit reports.

\* \* \*

**IM-9216. Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19(d)-1(c)(2)**

-Rule 2210(b) and (c) and Rule 2220(b) and (c) -Failure to have advertisements and sales literature approved by a principal prior to use; failure to maintain separate files of advertisements and sales literature containing required information; and failure to file advertisements with the Association within the required time limits.

-Rule 3360 -Failure to timely file reports of short positions on Form NS-1.

-Rule 3110 -Failure to keep and preserve books, accounts, records, memoranda, and correspondence in conformance with all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with the Rules of the Association.

-Rule 8211, Rule 8212, and Rule 8213 -Failure to submit trading data as requested.

-Article IV of the NASD By-Laws -Failure to timely submit amendments to Form BD.

-Article V of the NASD By-Laws -Failure to timely submit amendments to Form U-4.

-Rule 1120 -Failure to maintain continuing education requirements.

-Rule 3010(b) -Failure to timely file reports pursuant to the Taping Rule.

-Rule 3070 -Failure to timely file reports.

-Rule 4619(d) -Failure to timely file notifications pursuant to SEC Regulation M.

-Rules 4632, 4642, 4652, 6240, 6420, 6550, 6620, And 6720 -Transaction reporting in equity, convertible debt, and high yield securities.

-Rules 6130 and 6170 -Transaction reporting to the Automated Confirmation Transaction Service ("ACT").

-Rule 6953 -Synchronization of member business clocks.

-Rules 6954 and 6955 -Failure to submit data in accordance with the Order Audit Trail System ("OATS").

-Rule 11870 -Failure to abide by Customer Account Transfer Contracts.

-SEC Exchange Act Rule 11Ac1-4 -Failure to properly display limit orders.

-SEC Exchange Act Rule 11Ac1-1(c)(5) -Failure to properly update published quotations in certain Electronic Communication Networks ("ECN's").

-SEC Exchange Act Rule 17a-5 -Failure to timely file FOCUS reports.

-SEC Exchange Act Rule 17a-11 -Failure to timely file net capital reports.

-MSRB Rule A-14 -Failure to pay annual fee.

-MSRB Rule G-12 -Failure to abide by uniform practice rules.

-MSRB Rule G-14 -Failure to submit reports.

-MSRB Rule G-36 -Failure to timely submit reports.

-MSRB Rule G-37 -Failure to timely submit reports for political contributions.

-MSRB Rule G-38 -Failure to timely submit reports detailing consultant activities.

\* \* \*

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by the Board of Directors of NASD Regulation at its meeting on March 29, 2000, which authorized the filing of the rule change with the SEC. The Nasdaq Stock Market has been provided an opportunity to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by the NASD to its Subsidiaries. The NASD Board of Governors had an opportunity to review the proposed rule change at its meeting on March 30, 2000. No other action by the NASD is necessary for the filing of the proposed rule change. Article VI, Section 1 of the NASD By-Laws permits the NASD Board of Governors to approve changes to fees, dues, assessments, and other charges without recourse to the membership for approval. In addition, Article VII, Section 1(a)(ii) permits the NASD Board of Governors to approve amendments to NASD Rules without recourse to the membership for approval.

The NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Notice to Members announcing Commission approval.

(b) Questions regarding this rule filing may be directed to Gregory Dean, Assistant General Counsel, NASD Regulation, Office of General Counsel, at (202) 728-8159.

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

(a) Purpose

In 1999, the Association considered and implemented a number of significant sanction-related policies with respect to formal disciplinary actions.<sup>1</sup> These policies were implemented in response to a request from members for alternative mechanisms to achieve regulatory compliance in an effective and efficient manner. Citing the time and cost of defending disciplinary actions and the consequences of reporting such violations, member firms have asked whether certain situations, such as technical or minor violations, might be better addressed through alternative approaches. In response, the NASD is proposing to amend Schedule A of the NASD By-Laws to establish late fees for designated filings and reports and to amend the list of violations for the Association's Minor Rule Violation Plan set forth in IM-9216. Both of these changes will enable the Association to have greater flexibility in obtaining compliance with violations considered to be technical in nature without having to file complaints and hold hearings under the disciplinary procedures.

Late Fees.

Proposed amendments to Schedule A of the NASD By-Laws would adopt a late fee for certain filings and reports designated by the Association. The late fees would be assessed on a per-day basis for a period of no more than 10 business days. The fees would be administrative rather than disciplinary in nature and will help assist Association staff in achieving members' compliance.

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<sup>1</sup> See Notice to Members 99-50 (July 1999) (NASD Will No Longer Impose Censures for Some Violations); Notice to Members 99-86 (October 1999) (NASD Regulation Adopts Policy Regarding Imposition And Collection of Monetary Sanctions).

Where the late filing is serious, the institution of suspension or disciplinary proceedings will be more appropriate.

As the late fees would be assessed on a per-day basis, the total amount of a late filing fee would increase for each day the filing is filed past the deadline. In those instances where the member knows that a filing deadline can not be reached (e.g., technical difficulties, third party contractor delays, auditor delays, and other types of delays outside the control of the member), the member may apply before the deadline for an extension. In addition, inaccurate or incomplete filings will not be deemed filed until they are correctly submitted. Once it has been determined that a late fee is due the Association, a notice of the late fee will be sent to the member after the document has been correctly filed or after 10 business days have past. When the notice has been sent the late fee will be automatically deducted from the member's CRD Account.

The Association believes that the implementation of late fees would be an additional incentive for members to comply with filing requirements. As no disciplinary proceedings would be instituted, except in serious cases, members benefit by not having to expend the time and expense of defending those actions. The administrative cost to the Association to compel compliance by those who miss the filing deadlines will be borne by the members who file reports late.

#### Minor Rule Violation Plan.

In 1984, the SEC adopted amendments to Rule 19d-1(c) under the Securities Exchange Act to allow self regulating organizations to adopt, with SEC approval, Minor Rule Violation Plans.<sup>2</sup>

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<sup>2</sup> See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 *Federal Register* 23833.

In 1993, pursuant to SEC Exchange Act Rule 19d-1(c)(2)<sup>3</sup>, the NASD established a Minor Rule Violation Plan ("Plan").<sup>4</sup> NASD Rule 9216(b) provides that the Association may impose a fine and/or a censure, not to exceed \$2,500, on any member or associated person for a minor violation of certain specified Association rules contained in IM-9216.<sup>5</sup> The purpose of Rule 9216(b) is to provide for a meaningful sanction for a rule violation when the initiation of disciplinary proceeding through the formal complaint process would be more costly and time-consuming than would be warranted given the minor or technical nature of the violation. In addition, the Rule provides an efficient, alternative means by which to deter violations of rules while maintaining procedural rights for disciplined persons. Inclusion of a rule in the Association's Plan should not be interpreted to mean it is an unimportant rule; rather, the technical violation of the rule may be appropriate for disposition under the Plan. The Association retains the discretion to bring full disciplinary proceedings for any violation included in the Plan including situations where the violation is egregious or where there is a history or pattern of repeat violations.

In SR-NASD-93-06, which initially set forth the provisions and procedures of Rule 9216(b), the Association indicated that it would amend the list of rules from time to time, as it considered appropriate, in order to phase in the implementation of Rule 9216(b). At this time, the Association intends to amend IM-9216 to extend the list of minor rule violations in the Plan that would be appropriate for disposition under Rule 9216(b). The Association intends to assess fines not to exceed \$2,500 for violations by individuals and not to exceed \$5,000 for violations by

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<sup>3</sup> 17 CFR 240.19d-1(c)(2).

<sup>4</sup> See Securities Exchange Act Release No. 32076 (March 31, 1993), 58 *Federal Register* 18291 (approving SR-NASD-93-06). See Notice to Members 93-42 (July 1993) (SEC Approves NASD's Minor Rule Violation Plan).

member firms. The number and seriousness the violations and the previous disciplinary history of the respondent will be reviewed to determine the amount of the fine for a minor rule violation. Once the Association has brought a minor rule violation against an individual or member firm, the Association may, at its discretion, issue progressively higher fines for all subsequent minor rule violations within the next 24-month period of time.

#### Description of Proposed Additions to the Minor Rule Violation Plan

A discussion of the NASD's rationale for including each of the violations, and the limitations on the eligibility of such violations for disposition under the Plan, follows:

*Article IV of NASD By-Laws -Failure to timely submit amendments to Form BD.* Members are required pursuant to Article IV, Section 1(c) of the NASD By-Laws to ensure that their membership applications are kept current at all times through amendments to Form BD. All such amendments must be filed with the NASD no later than 30 days after learning of facts or circumstances giving rise to an amendment. The Association believes that the failure to amend Form BD in a timely manner by a member firm may be appropriate for disposition as a minor rule violation.

*Article V of NASD By-Laws -Failure to timely submit amendments to Form U-4.* All registered representatives and associated persons are required pursuant to Article V, Section 2(c) of the NASD By-Laws to ensure that their applications are kept current at all times through amendments to Form U-4. All such amendments must be filed with the NASD no later than 30 days after learning of facts or circumstances giving rise to an amendment. In addition, registered

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<sup>5</sup> Recently, the NASD has decided not to impose censures for certain violations when monetary sanctions of \$5,000 or less are imposed. See Notice to Members 99-59 (July 1999) (NASD Will No Longer Impose

representatives and associated persons are required to file amendments to Form U-4 if they become statutorily disqualified as defined in Section 3(a)(39) and Section 15(b)(4) of the Securities and Exchange Act of 1934. All amendments pursuant to statutory disqualification must be filed not later than ten days after such disqualification occurs. The Association believes that the failure to amend Form U-4 in a timely manner by a registered representative or an associated person may be appropriate for disposition as a minor rule violation.

*Rule 1120 -Failure to maintain continuing education requirements, regulatory and firm elements. Regulatory Element.* NASD Rule 1120(a) requires members to oversee the continuing education requirements of their "registered persons"<sup>6</sup> and to ensure that such persons do not continue acting in a registered capacity if they do not complete the requirements. The Regulatory Element of the continuing education requirements requires that each registered person, who is not considered exempt from the rule, shall complete the Regulatory Element, as established by the member, on three occasions after the occurrence of their second registration anniversary and every three years thereafter. On each occasion, the training must be completed within 120 days after the registered person's anniversary date. A registered person will be in violation Rule 1120(a) if the person has not completed the Regulatory Element within the prescribed time periods and will be deemed to be inactive until the Regulatory Element has been fulfilled.

The member firm will be considered to be in violation of the Regulatory Element if a registered person of the member firm does not complete the Regulatory Element requirements; and the member firm permits a registered person to continue to perform duties despite the fact that the

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Censures for Some Violations).

registered person has not completed the Regulatory Element requirements.

*Firm Element.* NASD Rule 1120(b) requires members to establish, maintain, evaluate and update continuing education program for members and their "covered registered persons."<sup>7</sup> Specifically, the Firm Element of the continuing education requirements requires that each member firm develop continuing and current education program for covered persons to enhance their securities knowledge, skill, and professionalism. The programs must be held annually and must take into consideration each member's size, organizational structure, and scope of business activities as well as regulatory developments and the performance of covered persons in Regulatory Element. At a minimum, the programs must include: general investment features and associated risk factors; suitability and sale practice considerations; and applicable regulatory requirements. A covered registered person would be violation in of the Firm Element if the person fails to participate in the firm's educational program.

A member firm would violate the Firm Element of Rule 1120 if the firm fails to take all appropriate and reasonable steps to ensure that its covered registered persons to participate in a continuing education program of the member; the firm fails to adequately ensure that covered registered persons participate in educational programs; the firms fails to annually evaluate and prioritize its training needs and to update its written training plan; and the firm fails to maintain appropriate records for a written training plan.

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<sup>6</sup> "Registered person" means any person registered with the Association as a representative, principal or assistant representative pursuant to Rules 1020, 1030, 1040, and the Rule 1110 Series.

<sup>7</sup> "Covered registered person" means any person registered with a member who has direct contact with customers in the conduct of the member's securities sales, trading and investment banking activities, and to the immediate supervisors of such persons.

*Rule 3010(b) -Failure to timely file reports pursuant to the Taping Rule.* NASD Rule 3010(b)(2)(vii) requires members subject to the taping requirements of the rule to file quarterly reports which detail the member's supervision of the telemarketing activities of its registered persons. Reports not filed in a timely manner may be appropriate for disposition as a minor rule violation.

*Rule 3070 -Failure to timely file reports.* NASD Rule 3070 requires member firms to file a report with the Association when any of 10 specified events occur. These events vary significantly, ranging from situations where a court, government agency, or SRO has determined there has been a violation of the securities laws, to circumstances where a firm has received a written customer complaint alleging theft, misappropriation of funds or securities, or forgery. Member firms are required to report such events within 10 business days after the member knows of, or should have known of, the existence of the event. In addition, member firms are required to collect and report statistical and summary information regarding customer complaints by the 15<sup>th</sup> of the month following the calendar quarter in which the customer complaints are received by the member. Reports not filed in a timely manner may be appropriate for disposition as a minor rule violation.

*Rule 4619(d) -Failure to timely file reports pursuant to SEC Regulation M.* NASD Rule 4619(d) requires member firms to file certain notifications with the NASD to comply with SEC Regulation M,<sup>8</sup> Rules 101,<sup>9</sup> 103,<sup>10</sup> and 104<sup>11</sup> (i.e., notification of withdrawal of quotations and

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<sup>8</sup> 17 CFR 242.  
<sup>9</sup> 17 CFR 242.101.  
<sup>10</sup> 17 CFR 242.103.  
<sup>11</sup> 17 CFR 242.104.

identification of quotations as those of a passive market maker). The failure to timely file such notices may be considered a minor rule violation by the Association.

*Rules 4632, 4642, 4652, 6240, 6420, 6550, 6620, and 6720 -Transaction reporting in equity, convertible debt, and high yield securities.* The Association's trade reporting rules require member firms to submit reports of transactions in equity, convertible debt, and high yield securities.<sup>12</sup> The rules concern trade reporting in certain Nasdaq securities, listed securities (commonly known as the "third market"), OTC equity securities, non-Nasdaq securities, and high yield securities. The Association believes that the failure, in certain circumstances, to report such transaction data pursuant to the requirements of these rules may be appropriate for disposition as a minor rule violation.

*Rules 6130 and 6170 -Transaction reporting to the Automated Confirmation Transaction Service ("ACT").* NASD Rules 6130 and 6170 require member firms to submit transaction reports of transactions in "ACT Eligible Securities"<sup>13</sup> to the Automated Confirmation Transaction Service ("ACT"). The Association believes that the failure, in certain circumstances, to submit required transaction reports to ACT pursuant to the requirements of these rules may be appropriate for disposition as a minor rule violation.

*Rule 6953 -Synchronization of member business clocks.* NASD Rule 6953 requires member firms to synchronize all computer and mechanical time-stamping devices to be within three seconds of the National Institute of Standards and Technology ("NIST") standard. The Association believes

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<sup>12</sup> NASD Rules 4632, 4642, 4652, 6240, 6420, 6550, 6620 and 6720.

<sup>13</sup> NASD Rule 6110(a).

that the failure by a member firm to synchronize their time-stamping devices may be appropriate for disposition as a minor rule violation.

*Rules 6954 and 6955 -Failure to submit data in accordance with the Order Audit Trail System ("OATS").* The Order Audit Trail System ("OATS") rules impose obligations on member firms to record in electronic form and to report to NASD Regulation certain items of information with respect to orders they receive to effect transactions in equity securities traded in The Nasdaq Stock Market. The OATS rules require that each member receiving an order relating to equity securities traded in the Nasdaq Market must capture specific information and electronically transmit this information to OATS. The Association believes that violations under the OATS rules may be appropriate for disposition as a minor rule violation.

*Rule 11870 -Failure to abide by Customer Account Transfer Contracts.* NASD Rule 11870 requires members to follow procedures for the transfer or closing-out of customer accounts with the Automated Customer Account Transfer System ("ACATS"). The Rule requires members to validate or object to a customer account transfer within three days of receipt of the transfer notice. Members must complete the transfer within four days of validation. Failure to transfer the customer account within the stated time or failure to properly transfer a customer account may be considered by the Association as a minor rule violation.

*SEC Exchange Act Rule 11Ac1-4 -Failure to properly display limit orders.* SEC Rule 11Ac1-4<sup>14</sup> requires, subject to certain exceptions, a registered broker or dealer that acts as an OTC market maker to "immediately" display qualifying customer limit orders in its published quotes.

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<sup>14</sup> 17 CFR 240.11Ac1-4.

Failure to immediately display qualifying limit orders pursuant to Rule 11Ac1-4 may be considered a minor rule violation by the Association.

*SEC Exchange Act Rule 11Ac1-1(c)(5) -Failure to properly update published quotations in certain Electronic Communication Networks ("ECN's").* SEC Exchange Act Rule 11Ac1-1(c)(5)<sup>15</sup> requires an OTC market maker to update its published quotation to reflect qualifying priced orders that it enters into a specific type of Electronic Communication Network ("ECN"). The failure to display such priced orders pursuant to Rule 11Ac1-1(c)(5) may be considered a minor rule violation by the Association.

*SEC Exchange Act Rule 17a-5 -Failure to timely file FOCUS reports.* The Association will institute minor rule violations for failure of a member to timely file monthly, quarterly and annual reports required by SEC Rule 17a-5, also known as FOCUS reports.<sup>16</sup> Reports not filed in a timely manner may be appropriate for disposition as a minor rule violation.

*SEC Exchange Act Rule 17a-11 -Failure to timely file net capital reports.* SEC Rule 17a-11<sup>17</sup> requires members to file reports if their net capital falls below a certain level as defined in SEC Exchange Act Rule 15c3-1, or in other instances that indicate the existence of financial or operational difficulties. The Association believes that the failure to timely file the reports may be appropriate for disposition as a minor rule violation.

*MSRB Rule A-14 -Failure to pay annual fee.* MSRB Rule A-14 requires each broker, dealer and municipal securities dealer to pay an annual fee to the Board in each fiscal year of the Board in which the broker, dealer and municipal securities dealer conducts municipal securities activities. The

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<sup>15</sup> 17 CFR 240.11Ac1-1(c)(5).

<sup>16</sup> 17 CFR 240.17a-5.

fee must be received by the Board no later than October 31 of the fiscal year in which the fee is due. Failure to pay the annual fee may be considered by the Association to be a minor rule violation.

*MSRB Rules G-12 and G-14 -Failure to Report Transactions or Inaccurate Reporting of Transactions.* MSRB Rule G-14, in part, requires the accurate and timely reporting of each transaction in municipal securities. The Association believes that failure to report transactions may be appropriate for disposition as a minor rule violation. In addition, inaccurate and/or untimely transaction reporting is measured and assessed based on the following benchmarks, which are derived from industry compliance statistics:

- NSCC “T-Input Percentage.” An industry goal is a T-Input Percentage of 95 percent.
- Effecting Broker Symbol (EBS) percentage. For the past six months, the industry EBS compliance percentage has been over 99 percent.
- Customer Trade Ineligibility (CTI) percentage. For the past year, the industry CTI percentage has been about ten percent.

The Association believes that the inaccurate or untimely transaction reporting under these rules may be appropriate for disposition as a minor rule violation. More significant non-compliance with MSRB Rule G-14 is generally evident in instances when the T-Input percentage is below 90 percent for a 6-month period, or for EBS and Customer Trade Ineligibility, when firm non-compliance statistics are 5 percent or more below the industry average for a 6 month period. In

these instances, formal complaint proceedings may be brought by the Association. Subsequent non-compliance using these criteria would warrant a formal complaint.

*MSRB Rule G-36 -Failure to timely submit reports.* MSRB Rule G-36 concerns the delivery of Official Statements, Advance Refunding Documents and Forms G-36(OS) and G-36(ARD) to the MSRB. MSRB Rule G-36, in part, requires the sending -- within certain specified time frames -- of two copies of certain issuer documents to the MSRB. Failure to file Form G-36(OS) or G-36(ARD) within the published time frames may be appropriate for disposition by the Association as a minor rule violation.

*MSRB Rule G-37 -Failure to timely submit reports for political contributions and MSRB Rule G-38 -Failure to timely submit reports detailing consultant activities.* MSRB Rule G-37 and G-38 require, in part, the disclosure on MSRB Form G-37/38 of certain political contributions, solicitation of municipal securities business, and the use of consultants by municipal securities dealers. Due dates for these required disclosures are January 31, April 30, July 31, and October 31. The late filing of reports pursuant to MSRB Rules G-37 and G-38 may be appropriate for disposition by the Association as a minor rule violation.

In addition, form filings which are incomplete or inaccurate, or inaccurate record keeping as required under MSRB Rules G-37 & G-38, may also be appropriate for disposition by the Association as minor rule violations.

(b) Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must

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. The NASD believes that the proposed rule changes are consistent with Section 15A(b)(7) in that they work to safeguard adequately the interests of investors while establishing fair and reasonable rules for its members and persons associated with its members. The rule changes are also consistent with Section 15A(b)(8) in that they further the statutory goals of providing a fair procedure for disciplining members and associated persons.

4. 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.

5. 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.

6. Extension of Time Period for Commission Action

NASD Regulation does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

Pursuant to the requirements of the Securities Exchange Act of 1934, NASD Regulation has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

NASD REGULATION, INC.

BY: \_\_\_\_\_  
Alden S. Adkins, Senior Vice President and  
General Counsel

Date: June 20, 2000

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-NASD-00-39)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to an Amendment to Schedule A of the NASD By-Laws for the Timely Filing of Reports, and Amendments to IM-9216, Minor Rule Violation Plan

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on , the National Association of Securities Dealers, Inc. (“NASD”), through its wholly owned subsidiary, NASD Regulation, Inc. (“NASD Regulation”) 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 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 amend Schedule A of the NASD By-Laws for the Timely Filing of Reports, and amend IM-9216, Minor Rule Violation Plan of the National Association of Securities Dealers, Inc. (“NASD” or “Association”), to permit the Association to set late fees to encourage the timely filing of reports and to expand the Association's Minor Rule Violation Plan

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

pursuant to SEC Rule 19d-1. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \*

### **Schedule A to the NASD By-Laws**

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of the NASD shall be determined on the following basis:

\* \* \*

### **Section 2-Fees**

(a) through (k) No Change.

(1) (1) Unless a specific temporary extension of time has been granted, there shall be imposed upon each member required to file reports, as designated by this paragraph, a fee of \$100 for each day that such report is not timely filed. The fee will be assessed for a period not to exceed 10 business days. Requests for such extension of time must be submitted to the Association at least three business days prior to the due date.

(2) Any report filed pursuant to this Rule containing material inaccuracies or filed incompletely shall be deemed not to have been filed until a corrected copy of the report has been resubmitted.

(3) List of Designated Reports:

(A) SEC Rule 17a-5 -Monthly and quarterly FOCUS reports and annual audit reports.

\* \* \*

**IM-9216. Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19(d)-  
1(c)(2)**

-Rule 2210(b) and (c) and Rule 2220(b) and (c) - Failure to have advertisements and sales literature approved by a principal prior to use; failure to maintain separate files of advertisements and sales literature containing required information; and failure to file advertisements with the Association within the required time limits.

-Rule 3360 -Failure to timely file reports of short positions on Form NS-1.

-Rule 3110 -Failure to keep and preserve books, accounts, records, memoranda, and correspondence in conformance with all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with the Rules of the Association.

-Rule 8211, Rule 8212, and Rule 8213 -Failure to submit trading data as requested.

-Article IV of the NASD By-Laws -Failure to timely submit amendments to Form BD.

-Article V of the NASD By-Laws -Failure to timely submit amendments to Form U-4.

-Rule 1120 -Failure to maintain continuing education requirements.

-Rule 3010(b) -Failure to timely file reports pursuant to the Taping Rule.

-Rule 3070 -Failure to timely file reports.

-Rule 4619(d) -Failure to timely file notifications pursuant to SEC Regulation M.

-Rules 4632, 4642, 4652, 6240, 6420, 6550, 6620, And 6720 -Transaction reporting in equity, convertible debt, and high yield securities.

-Rules 6130 and 6170 -Transaction reporting to the Automated Confirmation Transaction Service ("ACT").

-Rule 6953 -Synchronization of member business clocks.

-Rules 6954 and 6955 -Failure to submit data in accordance with the Order Audit Trail System ("OATS").

-Rule 11870 -Failure to abide by Customer Account Transfer Contracts.

-SEC Exchange Act Rule 11Ac1-4 -Failure to properly display limit orders.

-SEC Exchange Act Rule 11Ac1-1(c)(5) -Failure to properly update published quotations in certain Electronic Communication Networks ("ECN's").

-SEC Exchange Act Rule 17a-5 -Failure to timely file FOCUS reports.

-SEC Exchange Act Rule 17a-11 -Failure to timely file net capital reports.

-MSRB Rule A-14 -Failure to pay annual fee.

-MSRB Rule G-12 -Failure to abide by uniform practice rules.

-MSRB Rule G-14 -Failure to submit reports.

-MSRB Rule G-36 -Failure to timely submit reports.

-MSRB Rule G-37 -Failure to timely submit reports for political contributions.

-MSRB Rule G-38 -Failure to timely submit reports detailing consultant activities.

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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 the proposed rule change and discussed any comments it received on the proposed rule change. 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

#### (a) **Purpose**

In 1999, the Association considered and implemented a number of significant sanction-related policies with respect to formal disciplinary actions.<sup>3</sup> These policies were implemented in response to a request from members for alternative mechanisms to achieve regulatory compliance in an effective and efficient manner. Citing the time and cost of defending disciplinary actions and the consequences of reporting such violations, member firms have asked whether certain situations, such as technical or minor violations, might be better addressed through alternative approaches. In response, the NASD is proposing to amend Schedule A of the NASD By-Laws to establish late fees for designated filings and reports and to amend the list of violations for the Association's Minor Rule Violation Plan set forth in IM-9216. Both of these changes will enable the Association to have

greater flexibility in obtaining compliance with violations considered to be technical in nature without having to file complaints and hold hearings under the disciplinary procedures.

#### Late Fees.

Proposed amendments to Schedule A of the NASD By-Laws would adopt a late fee for certain filings and reports designated by the Association. The late fees would be assessed on a per-day basis for a period of no more than 10 business days. The fees would be administrative rather than disciplinary in nature and will help assist Association staff in achieving members' compliance. Where the late filing is serious, the institution of suspension or disciplinary proceedings will be more appropriate.

As the late fees would be assessed on a per-day basis, the total amount of a late filing fee would increase for each day the filing is filed past the deadline. In those instances where the member knows that a filing deadline can not be reached (e.g., technical difficulties, third party contractor delays, auditor delays, and other types of delays outside the control of the member), the member may apply before the deadline for an extension. In addition, inaccurate or incomplete filings will not be deemed filed until they are correctly submitted. Once it has been determined that a late fee is due the Association, a notice of the late fee will be sent to the member after the document has been correctly filed or after 10 business days have past. When the notice has been sent the late fee will be automatically deducted from the member's CRD Account.

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<sup>3</sup> See Notice to Members 99-50 (July 1999) (NASD Will No Longer Impose Censures for Some Violations); Notice to Members 99-86 (October 1999) (NASD Regulation Adopts Policy Regarding Imposition And Collection of Monetary Sanctions).

The Association believes that the implementation of late fees would be an additional incentive for members to comply with filing requirements. As no disciplinary proceedings would be instituted, except in serious cases, members benefit by not having to expend the time and expense of defending those actions. The administrative cost to the Association to compel compliance by those who miss the filing deadlines will be borne by the members who file reports late.

#### Minor Rule Violation Plan.

In 1984, the SEC adopted amendments to Rule 19d-1(c) under the Securities Exchange Act to allow self regulating organizations to adopt, with SEC approval, Minor Rule Violation Plans.<sup>4</sup> In 1993, pursuant to SEC Exchange Act Rule 19d-1(c)(2)<sup>5</sup>, the NASD established a Minor Rule Violation Plan ("Plan").<sup>6</sup> NASD Rule 9216(b) provides that the Association may impose a fine and/or a censure, not to exceed \$2,500, on any member or associated person for a minor violation of certain specified Association rules contained in IM-9216.<sup>7</sup> The purpose of Rule 9216(b) is to provide for a meaningful sanction for a rule violation when the initiation of disciplinary proceeding through the formal complaint process would be more costly and time-consuming than would be warranted given the minor or technical nature of the violation. In addition, the Rule provides an efficient, alternative means by which to deter violations of rules while maintaining procedural rights for disciplined persons. Inclusion of a rule in the Association's Plan should not be interpreted to

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<sup>4</sup> See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 *Federal Register* 23833.

<sup>5</sup> 17 CFR 240.19d-1(c)(2).

<sup>6</sup> See Securities Exchange Act Release No. 32076 (March 31, 1993), 58 *Federal Register* 18291 (approving SR-NASD-93-06). See Notice to Members 93-42 (July 1993) (SEC Approves NASD's Minor Rule Violation Plan).

<sup>7</sup> Recently, the NASD has decided not to impose censures for certain violations when monetary sanctions of \$5,000 or less are imposed. See Notice to Members 99-59 (July 1999) (NASD Will No Longer Impose Censures for Some Violations).

mean it is an unimportant rule; rather, the technical violation of the rule may be appropriate for disposition under the Plan. The Association retains the discretion to bring full disciplinary proceedings for any violation included in the Plan including situations where the violation is egregious or where there is a history or pattern of repeat violations.

In SR-NASD-93-06, which initially set forth the provisions and procedures of Rule 9216(b), the Association indicated that it would amend the list of rules from time to time, as it considered appropriate, in order to phase in the implementation of Rule 9216(b). At this time, the Association intends to amend IM-9216 to extend the list of minor rule violations in the Plan that would be appropriate for disposition under Rule 9216(b). The Association intends to assess fines not to exceed \$2,500 for violations by individuals and not to exceed \$5,000 for violations by member firms. The number and seriousness the violations and the previous disciplinary history of the respondent will be reviewed to determine the amount of the fine for a minor rule violation. Once the Association has brought a minor rule violation against an individual or member firm, the Association may, at its discretion, issue progressively higher fines for all subsequent minor rule violations within the next 24-month period of time.

#### Description of Proposed Additions to the Minor Rule Violation Plan

A discussion of the NASD's rationale for including each of the violations, and the limitations on the eligibility of such violations for disposition under the Plan, follows:

*Article IV of NASD By-Laws -Failure to timely submit amendments to Form BD.* Members are required pursuant to Article IV, Section 1(c) of the NASD By-Laws to ensure that their

membership applications are kept current at all times through amendments to Form BD. All such amendments must be filed with the NASD no later than 30 days after learning of facts or circumstances giving rise to an amendment. The Association believes that the failure to amend Form BD in a timely manner by a member firm may be appropriate for disposition as a minor rule violation.

*Article V of NASD By-Laws -Failure to timely submit amendments to Form U-4.* All registered representatives and associated persons are required pursuant to Article V, Section 2(c) of the NASD By-Laws to ensure that their applications are kept current at all times through amendments to Form U-4. All such amendments must be filed with the NASD no later than 30 days after learning of facts or circumstances giving rise to an amendment. In addition, registered representatives and associated persons are required to file amendments to Form U-4 if they become statutorily disqualified as defined in Section 3(a)(39) and Section 15(b)(4) of the Securities and Exchange Act of 1934. All amendments pursuant to statutory disqualification must be filed not later than ten days after such disqualification occurs. The Association believes that the failure to amend Form U-4 in a timely manner by a registered representative or an associated person may be appropriate for disposition as a minor rule violation.

*Rule 1120 -Failure to maintain continuing education requirements, regulatory and firm elements. Regulatory Element.* NASD Rule 1120(a) requires members to oversee the continuing education requirements of their "registered persons"<sup>8</sup> and to ensure that such persons do not

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<sup>8</sup> "Registered person" means any person registered with the Association as a representative, principal or assistant representative pursuant to Rules 1020, 1030, 1040, and the Rule 1110 Series.

continuing acting in a registered capacity if they do not complete the requirements. The Regulatory Element of the continuing education requirements requires that each registered person, who is not considered exempt from the rule, shall complete the Regulatory Element, as established by the member, on three occasions after the occurrence of their second registration anniversary and every three years thereafter. On each occasion, the training must be completed within 120 days after the registered person's anniversary date. A registered person will be in violation Rule 1120(a) if the person has not completed the Regulatory Element within the prescribed time periods and will be deemed to be inactive until the Regulatory Element has been fulfilled.

The member firm will be considered to be in violation of the Regulatory Element if a registered person of the member firm does not complete the Regulatory Element requirements; and the member firm permits a registered person to continue to perform duties despite the fact that the registered person has not completed the Regulatory Element requirements.

*Firm Element.* NASD Rule 1120(b) requires members to establish, maintain, evaluate and update continuing education program for members and their "covered registered persons."<sup>9</sup> Specifically, the Firm Element of the continuing education requirements requires that each member firm develop continuing and current education program for covered persons to enhance their securities knowledge, skill, and professionalism. The programs must be held annually and must take into consideration each member's size, organizational structure, and scope of business activities as well as regulatory developments and the performance of covered persons in Regulatory Element. At a

minimum, the programs must include: general investment features and associated risk factors; suitability and sale practice considerations; and applicable regulatory requirements. A covered registered person would be violation in of the Firm Element if the person fails to participate in the firm's educational program.

A member firm would violate the Firm Element of Rule 1120 if the firm fails to take all appropriate and reasonable steps to ensure that its covered registered persons to participate in a continuing education program of the member; the firm fails to adequately ensure that covered registered persons participate in educational programs; the firms fails to annually evaluate and prioritize its training needs and to update its written training plan; and the firm fails to maintain appropriate records for a written training plan.

*Rule 3010(b) -Failure to timely file reports pursuant to the Taping Rule.* NASD Rule 3010(b)(2)(vii) requires members subject to the taping requirements of the rule to file quarterly reports which detail the member's supervision of the telemarketing activities of its registered persons. Reports not filed in a timely manner may be appropriate for disposition as a minor rule violation.

*Rule 3070 -Failure to timely file reports.* NASD Rule 3070 requires member firms to file a report with the Association when any of 10 specified events occur. These events vary significantly, ranging from situations where a court, government agency, or SRO has determined there has been a violation of the securities laws, to circumstances where a firm has received a written customer

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<sup>9</sup> "Covered registered person" means any person registered with a member who has direct contact with customers in the conduct of the member's securities sales, trading and investment banking activities, and to the

complaint alleging theft, misappropriation of funds or securities, or forgery. Member firms are required to report such events within 10 business days after the member knows of, or should have known of, the existence of the event. In addition, member firms are required to collect and report statistical and summary information regarding customer complaints by the 15<sup>th</sup> of the month following the calendar quarter in which the customer complaints are received by the member.

Reports not filed in a timely manner may be appropriate for disposition as a minor rule violation.

*Rule 4619(d) - Failure to timely file reports pursuant to SEC Regulation M.* NASD Rule 4619(d) requires member firms to file certain notifications with the NASD to comply with SEC Regulation M,<sup>10</sup> Rules 101,<sup>11</sup> 103,<sup>12</sup> and 104<sup>13</sup> (i.e., notification of withdrawal of quotations and identification of quotations as those of a passive market maker). The failure to timely file such notices may be considered a minor rule violation by the Association.

*Rules 4632, 4642, 4652, 6240, 6420, 6550, 6620, and 6720 - Transaction reporting in equity, convertible debt, and high yield securities.* The Association's trade reporting rules require member firms to submit reports of transactions in equity, convertible debt, and high yield securities.<sup>14</sup> The rules concern trade reporting in certain Nasdaq securities, listed securities (commonly known as the "third market"), OTC equity securities, non-Nasdaq securities, and high yield securities. The Association believes that the failure, in certain circumstances, to report such

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immediate supervisors of such persons.

<sup>10</sup> 17 CFR 242.

<sup>11</sup> 17 CFR 242.101.

<sup>12</sup> 17 CFR 242.103.

<sup>13</sup> 17 CFR 242.104.

<sup>14</sup> NASD Rules 4632, 4642, 4652, 6240, 6420, 6550, 6620 and 6720.

transaction data pursuant to the requirements of these rules may be appropriate for disposition as a minor rule violation.

*Rules 6130 and 6170 -Transaction reporting to the Automated Confirmation Transaction Service ("ACT").* NASD Rules 6130 and 6170 require member firms to submit transaction reports of transactions in "ACT Eligible Securities"<sup>15</sup> to the Automated Confirmation Transaction Service ("ACT"). The Association believes that the failure, in certain circumstances, to submit required transaction reports to ACT pursuant to the requirements of these rules may be appropriate for disposition as a minor rule violation.

*Rule 6953 -Synchronization of member business clocks.* NASD Rule 6953 requires member firms to synchronize all computer and mechanical time-stamping devices to be within three seconds of the National Institute of Standards and Technology ("NIST") standard. The Association believes that the failure by a member firm to synchronize their time-stamping devices may be appropriate for disposition as a minor rule violation.

*Rules 6954 and 6955 -Failure to submit data in accordance with the Order Audit Trail System ("OATS").* The Order Audit Trail System ("OATS") rules impose obligations on member firms to record in electronic form and to report to NASD Regulation certain items of information with respect to orders they receive to effect transactions in equity securities traded in The Nasdaq Stock Market. The OATS rules require that each member receiving an order relating to equity securities traded in the Nasdaq Market must capture specific information and electronically transmit

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<sup>15</sup> NASD Rule 6110(a).

this information to OATS. The Association believes that violations under the OATS rules may be appropriate for disposition as a minor rule violation.

*Rule 11870 -Failure to abide by Customer Account Transfer Contracts.* NASD Rule 11870 requires members to follow procedures for the transfer or closing-out of customer accounts with the Automated Customer Account Transfer System ("ACATS"). The Rule requires members to validate or object to a customer account transfer within three days of receipt of the transfer notice. Members must complete the transfer within four days of validation. Failure to transfer the customer account within the stated time or failure to properly transfer a customer account may be considered by the Association as a minor rule violation.

*SEC Exchange Act Rule 11Ac1-4 -Failure to properly display limit orders.* SEC Rule 11Ac1-4<sup>16</sup> requires, subject to certain exceptions, a registered broker or dealer that acts as an OTC market maker to "immediately" display qualifying customer limit orders in its published quotes. Failure to immediately display qualifying limit orders pursuant to Rule 11Ac1-4 may be considered a minor rule violation by the Association.

*SEC Exchange Act Rule 11Ac1-1(c)(5) -Failure to properly update published quotations in certain Electronic Communication Networks ("ECN's").* SEC Exchange Act Rule 11Ac1-1(c)(5)<sup>17</sup> requires an OTC market maker to update its published quotation to reflect qualifying priced orders that it enters into a specific type of Electronic Communication Network ("ECN").

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<sup>16</sup> 17 CFR 240.11Ac1-4.

<sup>17</sup> 17 CFR 240.11Ac1-1(c)(5).

The failure to display such priced orders pursuant to Rule 11Ac1-1(c)(5) may be considered a minor rule violation by the Association.

*SEC Exchange Act Rule 17a-5 -Failure to timely file FOCUS reports.* The Association will institute minor rule violations for failure of a member to timely file monthly, quarterly and annual reports required by SEC Rule 17a-5, also known as FOCUS reports.<sup>18</sup> Reports not filed in a timely manner may be appropriate for disposition as a minor rule violation.

*SEC Exchange Act Rule 17a-11 -Failure to timely file net capital reports.* SEC Rule 17a-11<sup>19</sup> requires members to file reports if their net capital falls below a certain level as defined in SEC Exchange Act Rule 15c3-1, or in other instances that indicate the existence of financial or operational difficulties. The Association believes that the failure to timely file the reports may be appropriate for disposition as a minor rule violation.

*MSRB Rule A-14 -Failure to pay annual fee.* MSRB Rule A-14 requires each broker, dealer and municipal securities dealer to pay an annual fee to the Board in each fiscal year of the Board in which the broker, dealer and municipal securities dealer conducts municipal securities activities. The fee must be received by the Board no later than October 31 of the fiscal year in which the fee is due. Failure to pay the annual fee may be considered by the Association to be a minor rule violation.

*MSRB Rules G-12 and G-14 -Failure to Report Transactions or Inaccurate Reporting of Transactions.* MSRB Rule G-14, in part, requires the accurate and timely reporting of each

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<sup>18</sup> 17 CFR 240.17a-5.

<sup>19</sup> 17 CFR 240.17a-11.

transaction in municipal securities. The Association believes that failure to report transactions may be appropriate for disposition as a minor rule violation. In addition, inaccurate and/or untimely transaction reporting is measured and assessed based on the following benchmarks, which are derived from industry compliance statistics:

- NSCC “T-Input Percentage.” An industry goal is a T-Input Percentage of 95 percent.
- Effecting Broker Symbol (EBS) percentage. For the past six months, the industry EBS compliance percentage has been over 99 percent.
- Customer Trade Ineligibility (CTI) percentage. For the past year, the industry CTI percentage has been about ten percent.

The Association believes that the inaccurate or untimely transaction reporting under these rules may be appropriate for disposition as a minor rule violation. More significant non-compliance with MSRB Rule G-14 is generally evident in instances when the T-Input percentage is below 90 percent for a 6-month period, or for EBS and Customer Trade Ineligibility, when firm non-compliance statistics are 5 percent or more below the industry average for a 6 month period. In these instances, formal complaint proceedings may be brought by the Association. Subsequent non-compliance using these criteria would warrant a formal complaint.

*MSRB Rule G-36 -Failure to timely submit reports.* MSRB Rule G-36 concerns the delivery of Official Statements, Advance Refunding Documents and Forms G-36(OS) and G-36(ARD) to the MSRB. MSRB Rule G-36, in part, requires the sending -- within certain specified time frames -- of

two copies of certain issuer documents to the MSRB. Failure to file Form G-36(OS) or G-36(ARD) within the published time frames may be appropriate for disposition by the Association as a minor rule violation.

*MSRB Rule G-37 -Failure to timely submit reports for political contributions and MSRB Rule G-38 -Failure to timely submit reports detailing consultant activities.* MSRB Rule G-37 and G-38 require, in part, the disclosure on MSRB Form G-37/38 of certain political contributions, solicitation of municipal securities business, and the use of consultants by municipal securities dealers. Due dates for these required disclosures are January 31, April 30, July 31, and October 31. The late filing of reports pursuant to MSRB Rules G-37 and G-38 may be appropriate for disposition by the Association as a minor rule violation.

In addition, form filings which are incomplete or inaccurate, or inaccurate record keeping as required under MSRB Rules G-37 & G-38, may also be appropriate for disposition by the Association as minor rule violations.

**(b) Statutory Basis**

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must 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. The NASD believes that the proposed rule changes are consistent with Section 15A(b)(7) in that they work to safeguard adequately the interests of investors while establishing fair and reasonable rules for its members and

persons associated with its members. The rule changes are also consistent with Section 15A(b)(8) in that they further the statutory goals of providing a fair procedure for disciplining members and associated persons.

(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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. by order approve such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. SOLICITATION OF COMMENTS

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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. 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 NASD. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority,  
17 CFR 200.30-3(a)(12).

Jonathan G. Katz  
Secretary