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

Re: File No. SR-NASD-00-77; Proposed Rule Change and Amend Rule 1022(b), Rule 1022(c) (FINOP and Introducing FINOP Registration Requirements) and Rule 9610(a) (Procedures for Exemptive Relief)

Dear Ms. England:

The National Association of Securities Dealers, Inc. ("NASD" or "Association") hereby responds to the comment letters received by the Commission in response to the publication in the *Federal Register* of Notice of Filing of SR-NASD-00-77.¹ The NASD is proposing to amend Rule 1022(b) and Rule 1022(c) to: clarify the applicability of Rules 1022(b) and Rule 1022(c) to members by making citations in these rules consistent with the SEC's net capital rule, (2) eliminate the ability of a member that is subject to the SEC's net capital rule to request an exemption from the requirement under Rule 1022(b) to have a Financial and Operations Principal ("FINOP"), and (3) exclude from the requirements of Rule 1022(b) and Rule 1022(c) those firms that are exempt from or otherwise not subject to the SEC's net capital rule.

The proposed amendments to Rule 9610(a) would eliminate Rule 1022 from the list of rules from which a member may seek exemptive relief. The proposed amendments would also make a technical change to clarify that the Rule 9600 Series merely sets forth procedures for

¹ Release No. 34-43928 (February 5, 2001); 66 F.R. 9737 (February 9, 2001). The public comment period announced in the *Federal Register* expired on March 2, 2001.

seeking exemptive relief, and that the type of relief that may be requested and the authority to grant such relief, is found in the rules listed in Rule 9610(a).

Issue Raised in Comment Letter

The Commission received one comment letter on the proposed rule change from the "Ad Hoc Committee for Small Firm Financial and Operational Responsibility" (hereinafter referred to as the "Committee").² The letter states that the Committee, which was formed solely to respond to the above-referenced rule filing, is comprised of organizations whose members perform financial and operational services for NASD member firms. The Committee is of the view that the proposed rule change has undesirable practical implications and will increase the burden on competition.

The crux of the Committee's position is that, under the current rule, there are certain categories of firms, described in the letter as "private placement and mutual fund firms," that have been granted waivers from the FINOP requirement and that retain non-registered individuals to provide FINOP-type services. The organizations that comprise the Committee are in the business of employing individuals who provide these FINOP-type services. The Committee objects to the fact that under the proposed rule change, all firms that have not previously been granted waivers will be required to have a FINOP, and the persons who are employed by the professional organizations that service these firms will be required to register as FINOPs.³

The Committee makes various arguments in support of its position. The Committee states that the types of firms that have received FINOP waivers in the past are "\$5,000 broker-dealers" that generally have very few employees and in many cases engage in very few securities transactions. Compliance with the net capital and other financial operational rules is not, however, dependent on the size of a firm's business or the number of employees. The Series 28 examination for Introducing Brokers-FINOP, for example, tests applicants not only on their knowledge of the net capital rule, but on recordkeeping and other broker-dealer financial reporting requirements, customer protection rules, and other relevant regulations. The Series 27 examination additionally tests applicants on Municipal Securities Rulemaking Board regulations, Federal Reserve Board regulations, and Uniform Practice Code rules.

NASD Regulation does not believe that new firms, which will be required to employ a FINOP, will be at a competitive disadvantage. These firms will continue to be able to hire a FINOP on a part-time basis, if that arrangement suits their business needs. The only difference will be that the individuals so employed will be required to register as FINOPs. NASD Regulation notes that in the rare instance that a firm believes that a particular individual should not be required to take and pass the Series 27 or Series 28 examination based on that individual's

² See the List of Commenters attached as Exhibit A.

³ NASD Regulation, Inc. ("NASD Regulation") notes that the rule change is prospective, and will not require those firms that have already been granted a waiver from the FINOP requirement to employ a FINOP.

experience and qualifications, the firm may seek an exam waiver for that individual pursuant to Rule 1070(e).

The Committee questions whether a firm might choose to rely on an existing employee to become the firm's FINOP, rather than register as FINOP a more experienced individual employed by one of the organizations represented on the Committee. The committee implies that such persons might not be as qualified as the individuals who work for the professional organizations that comprise the Committee. It is NASD Regulation's position that an individual who passes the Series 27 or 28 Examination is qualified to act as a FINOP or Introducing FINOP, respectively. There are no restrictions on hiring newly qualified individuals as FINOPs.

It is NASD Regulation's view that every firm that is subject to a net capital requirement should be required to employ a FINOP, regardless of the number of employees or customer sales. The proposed rule change does not prevent members from "outsourcing" FINOPs on a part-time basis, thereby enabling them to continue to use the services of the individuals who belong to the professional organizations that comprise the Committee on a part-time basis.

Accordingly, NASD Regulation is of the view, that the proposed rules changes will serve to protect the investing public by requiring all firms that are subject to the SEC's net capital rule to have a registered FINOP, and that the Commission should approve its proposed amendments to Rule 1022(b), Rule 1022(c), and Rule 9160(a).

Very Truly Yours,

Shirley H. Weiss

cc: Andrew Shipe