

August 8, 2002

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

Re: **File No. SR-NASD-2002-110**- Proposed Registration Category for Proctors of In-Firm  
Delivery of the Regulatory Element

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed please find 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 Philip Shaikun, Assistant General Counsel, Office of General Counsel, NASD Regulatory Policy and Oversight, at (202) 728-8451; e-mail: philip.shaikun@nasd.com. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Barbara Z. Sweeney  
Senior Vice President  
and Corporate Secretary

Enclosures

**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) of the Securities Exchange Act of 1934 (“Act”), the National Association of Securities Dealers, Inc. (“NASD”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to establish NASD Rule 1043, a new registration category for proctors of in-firm delivery of the Regulatory Element of NASD’s continuing education requirements. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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**1040. Registration of Assistant Representatives [-Order Processing] and Proctors**

**1041. Registration Requirements for Assistant Representatives**

(a) through (c) No change.

**1042. Restrictions for Assistant Representatives**

(a) through (c) No change.

**1043. Proctors of In-Firm Delivery of Regulatory Element**

(a) Any person associated with a member seeking to be designated as a Proctor under Rule 1120(a)(6)(E) for the purposes of in-firm delivery of the Regulatory Element shall be required to be registered pursuant to Rule 1120(a)(6)(E)(iii), but shall not be required to pass a Qualification Examination.

(b) Any person associated with a member may be designated as a Proctor upon approval of an Application for Registration pursuant to Article V, Section 2 of NASD's By-Laws. Any person whose sole registration is as a Proctor pursuant to this Rule 1043 shall not be qualified to function in any other area requiring registration with NASD.

(c) Nothing in this Rule 1043 shall prohibit a person who is registered with NASD in any other capacity from also serving as a Proctor without being designated as such under these provisions.

\* \* \* \* \*

(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, Inc. at its meeting on July 24, 2002, which authorized the filing of the rule change with the SEC. Counsel for The Nasdaq Stock Market and NASD Dispute Resolution have been provided an opportunity to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by NASD to its Subsidiaries. The NASD Board of Governors reviewed the proposed rule change at its meeting on July 25, 2002. No other action by NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of the NASD By-Laws permits the NASD Board of Governors to adopt NASD Rules without recourse to the membership for approval.

NASD will announce the implementation date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval of the proposed rule change. The implementation 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 Philip Shaikun, Assistant General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8451.

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

(a) Purpose

The proposed rule change would establish a new registration category for proctors of in-firm delivery of the Regulatory Element of NASD's continuing education requirements. The Regulatory Element requires all registered persons to participate in a prescribed computer-based training session within 120 days of their second registration anniversary date and every three years thereafter. The Regulatory Element focuses on compliance, regulatory and ethical standards.

NASD Rule 1120(a)(6) permits each member to administer the continuing education Regulatory Element program to their registered persons through a program delivered on the member's premises, provided that the member adheres to certain technology, administrative and regulatory standards. Among the requirements for in-firm delivery of the Regulatory Element is that the program sessions be proctored by an individual registered with a self-regulatory organization ("SRO") and supervised by a designated principal.

Rule 1120(a)(6) was intended to ease the burden on members to meet their continuing education requirements. However, NASD has observed that many members have chosen not to avail themselves of the in-firm delivery option. Members have informed NASD that the registration requirement for proctors is one reason more members have not used in-firm delivery. Members either do not have registered persons available to act as proctors or do not want to commit resources needed to prepare a proctor for an exam-based registration. The Securities Industry/Regulatory Council on Continuing Education recommended that the SROs develop a means to allow proctors to be registered without taking a qualification examination.<sup>1</sup> NASD supported that recommendation and believes this proposal is an effective solution that makes in-firm delivery a more attractive and efficient option for members while maintaining the integrity of the program.

Importantly, while the proposal would permit proctors to be registered without an exam, it would still require the proctors to submit an application for registration in accordance with NASD By-Laws. As such, proctors would be required to file a Form U-4, which provides detailed employment and disciplinary history so that NASD can monitor the fitness of individuals to serve in that capacity. Any person whose sole registration is as a Proctor under the proposed rule change would not be permitted to engage in any other activities requiring registration with NASD. The proposal would not prohibit a person who is registered with NASD in any other capacity from also serving as a Proctor, as is permitted under existing rules.

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<sup>1</sup> The Council includes 14 members representing a cross-section of securities firms and six SROs, including NASD. The Council facilitates industry/regulatory coordination of the administration and future development of the Continuing Education Program.

(b) Statutory Basis

NASD 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 NASD's rules 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. NASD believes that the proposal will result in more efficient delivery of NASD's continuing education requirements, while maintaining the integrity of the continuing education program.

4. Self-Regulatory Organization's Statement on Burden on Competition

NASD 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 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 has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

NASD, INC.

BY: \_\_\_\_\_  
Barbara Z. Sweeney , Senior Vice President and  
Corporate Secretary

Date: August 8, 2002

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-NASD-2002-110)  
[date]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Proposed Registration Category For Proctors Of In-Firm Delivery Of the Regulatory Element

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 [date] , the National Association of Securities Dealers, Inc. (“NASD”) 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. 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 is proposing to establish Rule 1043, a new registration category for proctors of in-firm delivery of the Regulatory Element of NASD’s continuing education requirements. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

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

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

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**1041. Registration Requirements for Assistant Representatives**

(a) through (c) No change.

**1042. Restrictions for Assistant Representatives**

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**1043. Proctors of In-Firm Delivery of Regulatory Element**

(a) Any person associated with a member seeking to be designated as a Proctor under Rule 1120(a)(6)(E) for the purposes of in-firm delivery of the Regulatory Element shall be required to be registered pursuant to Rule 1120(a)(6)(E)(iii), but shall not be required to pass a Qualification Examination.

(b) Any person associated with a member may be designated as a Proctor upon approval of an Application for Registration pursuant to Article V, Section 2 of NASD's By-Laws. Any person whose sole registration is as a Proctor pursuant to this Rule 1043 shall not be qualified to function in any other area requiring registration with NASD.

(c) Nothing in this Rule 1043 shall prohibit a person who is registered with NASD in any other capacity from also serving as a Proctor without being designated as such under these provisions.

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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 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 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

The proposed rule change would establish a new registration category for proctors of in-firm delivery of the Regulatory Element of NASD's continuing education requirements. The Regulatory Element requires all registered persons to participate in a prescribed computer-based training session within 120 days of their second registration anniversary date and every three years thereafter. The Regulatory Element focuses on compliance, regulatory and ethical standards.

NASD Rule 1120(a)(6) permits each member to administer the continuing education Regulatory Element program to their registered persons through a program delivered on the member's premises, provided that the member adheres to certain technology, administrative and regulatory standards. Among the requirements for in-firm delivery of the Regulatory Element is that the program sessions be proctored by an individual registered with a self-regulatory organization ("SRO") and supervised by a designated principal.

Rule 1120(a)(6) was intended to ease the burden on members to meet their continuing education requirements. However, NASD has observed that many members have chosen not to avail themselves of the in-firm delivery option. Members have informed NASD that the registration requirement for proctors is one reason more members have not used in-firm delivery. Members either do not have registered persons available to act as proctors or do not want to

commit resources needed to prepare a proctor for an exam-based registration. The Securities Industry/Regulatory Council on Continuing Education recommended that the SROs develop a means to allow proctors to be registered without taking a qualification examination.<sup>3</sup> NASD supported that recommendation and believes this proposal is an effective solution that makes in-firm delivery a more attractive and efficient option for members while maintaining the integrity of the program.

Importantly, while the proposal would permit proctors to be registered without an exam, it would still require the proctors to submit an application for registration in accordance with NASD By-Laws. As such, proctors would be required to file a Form U-4, which provides detailed employment and disciplinary history so that NASD can monitor the fitness of individuals to serve in that capacity. Any person whose sole registration is as a Proctor under the proposed rule change would not be permitted to engage in any other activities requiring registration with NASD. The proposal would not prohibit a person who is registered with NASD in any other capacity from also serving as a Proctor, as is permitted under existing rules.

(b) Statutory Basis

NASD 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 NASD's rules 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. NASD believes that the

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proposal will result in more efficient delivery of NASD's continuing education requirements, while maintaining the integrity of the continuing education program.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD 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