

June 25, 2004

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-2004-100 - Amendments to the Rule 9600 Series**

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 Shirley H. Weiss, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8844; e-mail Shirley.Weiss@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

File No. SR-NASD-2004-100  
Consists of 18 Pages  
June 25, 2004

**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)(3) of the Securities Exchange Act of 1934 ("Act"), the National Association of Securities Dealers, Inc. ("NASD") is filing with the Securities and Exchange ("SEC" or "Commission") a proposed rule change to amend the NASD Rule 9600 Series to permit a Waiver Subcommittee of the National Adjudicatory Council ("NAC") to affirm, modify, or reverse a decision of NASD's Department of Member Regulation ("Department") denying a request for a waiver from a required qualifications examination pursuant to Rule 1070. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

\* \* \* \* \*

**9600. PROCEDURES FOR EXEMPTIONS**

**9610. Application**

**(a) Where to File**

A member seeking exemptive relief as permitted under Rules 1021, 1070, 2210, 2315, 2320, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860, Interpretive Material 2860-1, 3010(b)(2), 3020, 3150, 3210, 3230, 3350, 8211, 8212, 8213, 11870, or 11900, or Municipal Securities Rulemaking Board Rule G-37, shall file a written application with the appropriate department or staff of [the Association] NASD and provide a copy of the application to the Office of General Counsel of NASD Regulation.

(b) and (c) No change

**9620. Decision**

After considering an application, NASD [Regulation] staff shall issue a written decision setting forth its findings and conclusions. The decision shall be served on the Applicant pursuant

to Rules 9132 and 9134. After the decision is served on the Applicant, the application and decision shall be publicly available unless NASD [Regulation] staff determines that the Applicant has shown good cause for treating the application or decision as confidential in whole or in part.

### **9630. Appeal**

#### **(a) Notice**

An Applicant may file a written notice of appeal within 15 calendar days after service of a decision issued under Rule 9620. The notice of appeal shall be filed with the Office of General Counsel of NASD Regulation, with a copy of the notice also provided to the appropriate department or staff of [the Association] NASD. The notice of appeal shall contain a brief statement of the findings and conclusions as to which exception is taken. Appeals of decisions issued by NASD staff pursuant to Rule 9620 shall be decided by the National Adjudicatory Council, except with respect to exemptive relief under Rule 1070 (Qualification Examinations and Waiver of Requirements), which shall be decided by the Waiver Subcommittee of the National Adjudicatory Council. [The National Adjudicatory Council may order oral argument.] If the Applicant does not want the [National Adjudicatory Council's] decision on the appeal to be publicly available in whole or in part, the Applicant also shall include in its notice of appeal a detailed statement, including supporting facts, showing good cause for treating the decision as confidential in whole or in part. The notice of appeal shall be signed by the Applicant.

#### **(b) Expedited Review**

Where the failure to promptly review a decision to deny a request for exemption would unduly or unfairly harm the applicant, the National Adjudicatory Council or the Waiver Subcommittee of the National Adjudicatory Council, as the case may be, shall provide expedited

review.

(c) No change

**(d) [Appointment of Subcommittee] Oral Argument**

(1) Following the filing of a notice of appeal, the National Adjudicatory Council or Review Subcommittee may order oral argument, designate a Subcommittee to hear an oral argument, if ordered, consider any new evidence that the Applicant can show good cause for not including in its application, and recommend to the National Adjudicatory Council a disposition of all matters on appeal.

(2) With respect to exemptive relief requested under Rule 1070, the Waiver Subcommittee of the National Adjudicatory Council may order oral argument and consider any new evidence that the Applicant can show good cause for not including in its application.

**(e) Decision**

(1) Subject to paragraph (2) below, [A]after considering all matters on appeal, and, as applicable, the Subcommittee's recommendation, the National Adjudicatory Council shall affirm, modify, or reverse the decision issued under Rule 9620. The National Adjudicatory Council shall issue a written decision setting forth its findings and conclusions and serve the decision on the Applicant. The decision shall be served pursuant to Rules 9132 and 9134. The decision shall be effective upon service and shall constitute final action of [the Association] NASD.

(2) With respect to exemptive relief requested under Rule 1070, after considering all matters on appeal, the Waiver Subcommittee of the National Adjudicatory Council shall affirm, modify, or reverse the decision issued under Rule 9620. The Waiver

Subcommittee shall issue a written decision setting forth its findings and conclusions and serve the decision on the Applicant. The decision shall be served pursuant to Rules 9132 and 9134. The decision shall be effective upon service and shall constitute final action of NASD. The Waiver Subcommittee shall retain the discretion to refer the appeal to the National Adjudicatory Council, in which case the National Adjudicatory Council shall act on such appeal pursuant to its authority under this 9600 Series.

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(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 April 21, 2004, 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 had an opportunity to review the proposed rule change at its meeting on April 22, 2004. 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 intends to make the proposed rule change operative on September 1, 2004.

(b) Questions regarding this rule filing may be directed to Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8844.

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

(a) Purpose

NASD's Rule 9600 Series sets forth the procedures pursuant to which NASD members and their associated persons may seek exemptive relief from those NASD rules that allow NASD staff to grant exemptions. The purpose of this proposed rule change is to permit a subcommittee of the NAC, consisting of one industry and one non-industry NAC member, to affirm, modify, or reverse a decision of NASD's Department of Member Regulation denying a request for a waiver from an applicable qualification examination requirement and issue decisions in such matters that will constitute final NASD action. The subcommittee will be appointed by the NAC annually.

Under the Rule 9600 Series, an initial application for relief under any NASD rule for which exemptive relief may be granted is filed with the appropriate NASD department or staff. NASD staff examines the merits of the application, determines whether to grant or deny the application for relief, and communicates its decision to the applicant. If NASD staff denies the application, the applicant may appeal the adverse decision to the NAC, which may affirm, modify, or reverse the decision.

Currently, persons seeking a waiver of a required qualification examination under Rule 1070 must file a written application with the Department, including a detailed statement of the grounds for the waiver. The Department examines the merits of the waiver request based on the NASD Qualification Examination Waiver Guidelines (Guidelines) and communicates its decision to the applicant in a letter that grants or denies the waiver.<sup>1</sup> The applicant may then appeal any adverse Department decision to the NAC, which considers the decision, determines

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<sup>1</sup> The Guidelines, last updated on April 22, 2003, are available on the NASD web site at [http://www.nasdr.com/5200\\_waiver.asp](http://www.nasdr.com/5200_waiver.asp).

whether to affirm, modify, or reverse the decision, and issues a decision that constitutes final NASD action.

After reviewing the qualifications examination waiver process, the NAC determined that a subcommittee of the NAC, rather than the full NAC, should have authority to consider appeals of adverse Department decisions with respect to Rule 1070 and issue final NASD decisions in such matters. In reaching this determination, the NAC considered that a subcommittee would have the flexibility to review adverse Department decisions on a timelier basis than the full NAC, which generally meets only five times each year. Any delay arising from the NAC's schedule may harm the applicant and the sponsoring member firm because the applicant is unable to function in the requested registered capacity while his or her appeal is pending. The NAC also considered that its specialized expertise in reviewing disciplinary matters and policy issues is not required in the examination waiver process because appellate review of examination waivers is based on application of the Guidelines to the specific facts of the case. The subcommittee would have the authority to refer an appeal to the full NAC when it believes that the issues in the appeal warrant consideration by the full NAC or in the event of a split vote.

NASD is therefore proposing this rule change to permit a subcommittee of the NAC to review appeals of Department denials of requests to waive an applicable qualification examination requirement and issue decisions that affirm, modify, or reverse such Department decisions.

(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 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. NASD believes that the proposed rule change is consistent with the provisions of the Act noted above because it will enable individuals who are appealing denials of examination waivers to get a decision and become registered in their desired capacity more expeditiously, whether as a result of a waiver or being required to take the necessary examination.

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

Not applicable.

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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(6) of Rule 19b-4 thereunder,<sup>2</sup> in that the proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and by its terms, does not become operative for 30 days after the date of the filing. NASD intends to make the proposed rule change operative on September 1, 2004. In accordance with Rule 19b-4(f)(6)(iii), NASD submitted written notice of its intent to file the proposed rule change along with a brief description and text of the proposed rule change at least five business days prior to the date of filing.

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<sup>2</sup> 17 CFR 240.19b-4(f)(6).

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: June 25, 2004

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-NASD-2004-100)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Rule 9600 Series

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”, 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 amend the Rule 9600 Series to permit a Waiver Subcommittee of the National Adjudicatory Council (“NAC”) to affirm, modify, or reverse a decision of NASD's Department of Member Regulation (“Department”) denying a request for a waiver from a required qualifications examination pursuant to Rule 1070. 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.

**9600. PROCEDURES FOR EXEMPTIONS**

**9610. Application**

**(a) Where to File**

A member seeking exemptive relief as permitted under Rules 1021, 1070, 2210, 2315, 2320, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860, Interpretive Material 2860-1, 3010(b)(2), 3020, 3150, 3210, 3230, 3350, 8211, 8212, 8213, 11870, or 11900, or Municipal Securities Rulemaking Board Rule G-37, shall file a written application with the appropriate department or staff of [the Association] NASD and provide a copy of the application to the Office of General Counsel of NASD Regulation.

(b) and (c) No change

**9620. Decision**

After considering an application, NASD [Regulation] staff shall issue a written decision setting forth its findings and conclusions. The decision shall be served on the Applicant pursuant to Rules 9132 and 9134. After the decision is served on the Applicant, the application and decision shall be publicly available unless NASD [Regulation] staff determines that the Applicant has shown good cause for treating the application or decision as confidential in whole or in part.

**9630. Appeal**

**(a) Notice**

An Applicant may file a written notice of appeal within 15 calendar days after service of a decision issued under Rule 9620. The notice of appeal shall be filed with the Office of General Counsel of NASD Regulation, with a copy of the notice also provided to the appropriate

department or staff of [the Association] NASD. The notice of appeal shall contain a brief statement of the findings and conclusions as to which exception is taken. Appeals of decisions issued by NASD staff pursuant to Rule 9620 shall be decided by the National Adjudicatory Council, except with respect to exemptive relief under Rule 1070 (Qualification Examinations and Waiver of Requirements), which shall be decided by the Waiver Subcommittee of the National Adjudicatory Council. [The National Adjudicatory Council may order oral argument.] If the Applicant does not want the [National Adjudicatory Council's] decision on the appeal to be publicly available in whole or in part, the Applicant also shall include in its notice of appeal a detailed statement, including supporting facts, showing good cause for treating the decision as confidential in whole or in part. The notice of appeal shall be signed by the Applicant.

**(b) Expedited Review**

Where the failure to promptly review a decision to deny a request for exemption would unduly or unfairly harm the applicant, the National Adjudicatory Council or the Waiver Subcommittee of the National Adjudicatory Council, as the case may be, shall provide expedited review.

(c) No change

**(d) [Appointment of Subcommittee] Oral Argument**

(1) Following the filing of a notice of appeal, the National Adjudicatory Council or Review Subcommittee may order oral argument, designate a Subcommittee to hear an oral argument, if ordered, consider any new evidence that the Applicant can show good cause for not including in its application, and recommend to the National Adjudicatory Council a disposition of all matters on appeal.

(2) With respect to exemptive relief requested under Rule 1070, the Waiver Subcommittee of the National Adjudicatory Council may order oral argument and consider any new evidence that the Applicant can show good cause for not including in its application.

**(e) Decision**

(1) Subject to paragraph (2) below, [A]after considering all matters on appeal, and, as applicable, the Subcommittee's recommendation, the National Adjudicatory Council shall affirm, modify, or reverse the decision issued under Rule 9620. The National Adjudicatory Council shall issue a written decision setting forth its findings and conclusions and serve the decision on the Applicant. The decision shall be served pursuant to Rules 9132 and 9134. The decision shall be effective upon service and shall constitute final action of [the Association] NASD.

(2) With respect to exemptive relief requested under Rule 1070, after considering all matters on appeal, the Waiver Subcommittee of the National Adjudicatory Council shall affirm, modify, or reverse the decision issued under Rule 9620. The Waiver Subcommittee shall issue a written decision setting forth its findings and conclusions and serve the decision on the Applicant. The decision shall be served pursuant to Rules 9132 and 9134. The decision shall be effective upon service and shall constitute final action of NASD. The Waiver Subcommittee shall retain the discretion to refer the appeal to the National Adjudicatory Council, in which case the National Adjudicatory Council shall act on such appeal pursuant to its authority under this 9600 Series.

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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

NASD's Rule 9600 Series sets forth the procedures pursuant to which NASD members and their associated persons may seek exemptive relief from those NASD rules that allow NASD staff to grant exemptions. The purpose of this proposed rule change is to permit a subcommittee of the NAC, consisting of one industry and one non-industry NAC member, to affirm, modify, or reverse a decision of NASD's Department of Member Regulation denying a request for a waiver from an applicable qualification examination requirement and issue decisions in such matters that will constitute final NASD action. The subcommittee will be appointed by the NAC annually.

Under the Rule 9600 Series, an initial application for relief under any NASD rule for which exemptive relief may be granted is filed with the appropriate NASD department or staff. NASD staff examines the merits of the application, determines whether to grant or deny the application for relief, and communicates its decision to the applicant. If NASD staff denies the

application, the applicant may appeal the adverse decision to the NAC, which may affirm, modify, or reverse the decision.

Currently, persons seeking a waiver of a required qualification examination under Rule 1070 must file a written application with the Department, including a detailed statement of the grounds for the waiver. The Department examines the merits of the waiver request based on the NASD Qualification Examination Waiver Guidelines (Guidelines) and communicates its decision to the applicant in a letter that grants or denies the waiver.<sup>3</sup> The applicant may then appeal any adverse Department decision to the NAC, which considers the decision, determines whether to affirm, modify, or reverse the decision, and issues a decision that constitutes final NASD action.

After reviewing the qualifications examination waiver process, the NAC determined that a subcommittee of the NAC, rather than the full NAC, should have authority to consider appeals of adverse Department decisions with respect to Rule 1070 and issue final NASD decisions in such matters. In reaching this determination, the NAC considered that a subcommittee would have the flexibility to review adverse Department decisions on a timelier basis than the full NAC, which generally meets only five times each year. Any delay arising from the NAC's schedule may harm the applicant and the sponsoring member firm because the applicant is unable to function in the requested registered capacity while his or her appeal is pending. The NAC also considered that its specialized expertise in reviewing disciplinary matters and policy issues is not required in the examination waiver process because appellate review of examination waivers is based on application of the Guidelines to the specific facts of the case. The

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<sup>3</sup> The Guidelines, last updated on April 22, 2003, are available on the NASD web site at [http://www.nasdr.com/5200\\_waiver.asp](http://www.nasdr.com/5200_waiver.asp).

subcommittee would have the authority to refer an appeal to the full NAC when it believes that the issues in the appeal warrant consideration by the full NAC or in the event of a split vote.

NASD is therefore proposing this rule change to permit a subcommittee of the NAC to review appeals of Department denials of requests to waive an applicable qualification examination requirement and issue decisions that affirm, modify, or reverse such Department decisions.

(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 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. NASD believes that the proposed rule change is consistent with the provisions of the Act noted above because it will enable individuals who are appealing denials of examination waivers to get a decision and become registered in their desired capacity more expeditiously, whether as a result of a waiver or being required to take the necessary examination.

(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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(6) of Rule 19b-4 thereunder,<sup>4</sup> in that the proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and by its terms, does not become operative until September 1, 2002, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. In accordance with Rule 19b-4(f)(6)(iii), NASD submitted written notice of its intent to file the proposed rule change along with a brief description and text of the proposed rule change at least five business days prior to the date of filing.

NASD intends to make the proposed rule change operative on September 1, 2004.

At any time with 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. SOLICITATION OF COMMENTS

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the act. 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. Comments may also

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<sup>4</sup> 17 CFR 240.19b-4(f)(6).

be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-NASD-2004-100. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 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).

Margaret H. McFarland  
Deputy Secretary