

November 28, 2000

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-00-69**  
**Limited Representative – Private Securities Offerings**

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 Gary L. Goldsholle, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8104; e-mail gary.goldsholle@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

Enclosures

**SECURITIES AND EXCHANGE COMMISSION**

Washington, D. C.

---

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 proposed rule change to implement Section 203 of the Gramm-Leach-Bliley Act of 1999 (“GLBA”). Specifically, Section 203 adds a new subsection (j) to Section 15A of the Act, which requires that the NASD, as a registered securities association, create a limited registration category for any associated person of a member whose investment banking and securities business is limited solely to effecting sales of private securities offerings. Section 203 also states that any bank employee who during the six-month period prior to the enactment of GLBA engaged in effecting such sales shall be deemed qualified in such limited registration category without having to complete an examination. To implement Section 203, which becomes effective on May 12, 2001, the NASD is amending Rule 1032 to create a limited registration category for private securities offerings. NASD Regulation also is making clerical changes to Rule 1032, essentially replacing the word “described” for the word “prescribed.” Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

**1032. Categories of Representative Registration**

\* \* \*

**(b) Limited Representative – Investment Company and Variable Contracts Products**

\* \* \*

(2) A person qualified solely as a Limited Representative – Investment Company and Variable Contracts Products shall not be qualified to function as a representative in any area not [pr]described in paragraph (b)(1)(A) hereof.

**(c) Limited Representative – Direct Participation Programs**

\* \* \*

(2) A person qualified solely as a Limited Representative – Direct Participation Programs shall not be qualified to function in any area not [pr]described in[by] subparagraph (1) hereof.

**(d) Limited Representative – Options**

\* \* \*

(3) A person registered as a Limited Representative – Options shall not be qualified to function in any area not [pr]described in[by] subparagraph (1)(A) hereof.

**(e) Limited Representative – Corporate Securities**

\* \* \*

(2) A person qualified solely as a Limited Representative – Corporate Securities shall not be qualified to function in any area not [pr]described in[by] subparagraph (1) hereof.

\* \* \*

**(g) Limited Representative – Government Securities**

\* \* \*

(2) A person registered solely as a Limited Representative-Government Securities shall not be qualified to function in any area not [pr]described in[by] subparagraph (1)(A) hereof.

**(h) Limited Representative – Private Securities Offerings**

(1) Each person associated with a member who is included within the definition of a representative as defined in Rule 1031 may register with the Association as a Limited Representative – Private Securities Offerings if:

(A) such person’s activities in the investment banking and securities business involve effecting sales as part of a primary offering of securities not involving a public offering, pursuant to Section 3(b), 4(2) or 4(6) of the Securities Act of 1933 and the rules and regulations thereunder, provided, however, that such person shall not effect sales of municipal securities, or equity interests in or the debt of direct participation programs as defined in Rule 1022(e)(2); and

(B) subject to subparagraph (2) hereof, such person passes an appropriate qualification examination for Limited Representative – Private Securities Offerings.

(2) The Association shall, upon such evidence as the Association determines to be appropriate, deem any person who while employed by a bank, engaged in effecting sales of private securities offerings as described in subparagraph (1)(A) hereof, during the period from May 12, 1999 to

November 12, 1999, as qualified to register as a Limited Representative – Private Securities Offerings without the need to pass the qualification examination required by subparagraph (1)(B) hereof.

(3) A person registered as a Limited Representative – Private Securities Offerings shall not be qualified to function in any area not described in subparagraph (1)(A) hereof.

\* \* \*

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by the Board of Governors of NASD at its meeting on October 4, 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. No other action by the 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 or amendments to NASD Rules without recourse to the membership for approval.

(b) Questions regarding this rule filing may be directed to Gary L. Goldsholle, Associate General Counsel, NASD Regulation, Office of General Counsel, at (202) 728-8104.

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

(a) **Purpose**

The purpose of the proposed rule change is to implement Section 203 of the Gramm-Leach-Bliley Act of 1999 (“GLBA”).<sup>1</sup> Section 203 of GLBA adds new subsection (j) to Section 15A of the Act, which requires that the NASD, as a registered securities association, create a limited registration category for any associated person of a member whose investment banking and securities business is limited solely to effecting sales of private securities offerings. Section 203 also states that any bank employee who during the six-month period prior to the enactment of GLBA (*i.e.*, from May 12, 1999 to November 12, 1999) engaged in effecting such sales shall not be required to pass a qualification examination in order to be deemed qualified in the limited registration category. Section 203 becomes effective on May 12, 2001.

GLBA also establishes functional regulation, meaning that each industry segment of a multi-industry organization will be regulated by the agency charged by law with the regulation of that industry. In connection with functional regulation, GLBA eliminates the long-standing general exclusion for banks from the definitions of “broker” and “dealer” under the Act and instead provides exemptions for certain bank activities. With respect to private placement activity, GLBA permits private placements to be effected in a bank (and not a broker or dealer) so long as the bank (a) is not affiliated with a broker or dealer that is engaged in dealing, market making, or underwriting, other than with respect to exempted

---

<sup>1</sup> Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102, 113 Stat. 1338 (1999).

securities, or (b) is not affiliated with any broker or dealer provided that the aggregate dollar amount of any private placement offering (excluding government or municipal securities) does not exceed 25% of the bank's capital. Notwithstanding this exclusion, many banks will be required to effect private securities offerings in a registered broker/dealer. For these banks, employees that effect sales of private securities offerings will be required to become associated persons of a registered broker/dealer, and as such, will be subject to NASD qualification examination and other requirements.

As part of the effort to lessen the effects of functional regulation on banks and their employees, GLBA creates a new limited registration category for persons engaging solely in sales of private securities offerings. As noted above, while certain banks will still be permitted to engage in private securities offerings, many others will be required to effect these sales in a registered broker/dealer with appropriately registered personnel.

The proposed rule change effectuates the provisions of Section 203 by establishing a new registration category for persons engaged solely in sales of private securities offerings. Applicants seeking to register with the NASD under this limited registration category must meet the eligibility criteria for associated persons of a member in the NASD By-Laws and pass the necessary qualification examination. However, consistent with GLBA, the proposed rule change provides that any person who engaged in sales of private securities offerings as an employee of a bank during the period from May 12, 1999 to November 12, 1999, is not required to complete the qualification examination. Applicants seeking exemption from the qualification examination pursuant to this provision will be required to provide such evidence as NASD Regulation determines to be appropriate, demonstrating that he or she

was engaged in effecting sales of private securities offerings at the bank during the period from May 12, 1999 to November 12, 1999.

The new limited registration category permits a person to effect sales of private securities offerings. However, the new limited registration category does not permit a person to effect sales of municipal securities or equity interests in or the debt of direct participation programs (“DPP securities”). Although sales of municipal securities and DPP securities may involve offerings of private securities, NASD Regulation does not believe that the limited registration category should allow persons to sell such securities. Persons who effect sales of municipal securities, including bank employees, currently are required to be qualified in accordance with the rules of the Municipal Securities Rulemaking Board (“MSRB”). MSRB rules, among other things, require that persons pass a specific qualification examination. NASD Regulation does not believe that the new limited registration category was intended to create a subcategory of persons that are eligible to engage in certain offerings of municipal securities without meeting the specific qualification requirements of the MSRB.

Similarly, the new limited registration category does not qualify a person to engage in offerings of DPP securities. In general, DPP securities are specialized programs that provide for flow-through tax consequences. Persons who wish to effect sales of DPP securities are required to register as a general securities representative or under a limited registration category for DPP securities.<sup>2</sup> Based upon conversations with banking industry representatives, NASD Regulation does not believe that unregistered bank employees generally effect sales of DPP securities. In view of the highly specialized

---

<sup>2</sup> See NASD Rule 1032(c).

nature of DPP securities, the existence of a limited registration category for such securities, and the general lack of experience in such securities by unregistered bank personnel, NASD Regulation does not believe that the new limited registration category should qualify an associated person to sell DPP securities. Moreover, by eliminating DPP securities from the scope of the new limited registration category, the qualification examination will not be burdened with questions on these highly specialized products. However, with respect to current bank employees who may be eligible to register under the new limited registration category without taking the qualification examination pursuant to paragraph (h)(2) of the proposed rule change, NASD Regulation staff will consider on a case-by-case basis whether a bank employee with experience in DPP securities registering with a broker/dealer should be authorized to effect sales of DPP securities without having to complete the general securities representative or specific DPP securities limited qualification examination.

NASD Regulation is making the proposed rule change to effectuate the provisions of Section 203 of GLBA. NASD Regulation staff is currently in the process of developing the qualification examination and anticipates filing the study outline and specifications for the examination in February 2001.

(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 proposed rule change also is necessary to implement Section 203 of GLBA.

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

The proposed change to NASD Rule 1032 is based on Section 203 of GLBA. Specifically, Section 203 adds a new subsection (j) to Section 15A of the Act, which requires that the NASD, as a registered securities association, create a limited registration category for associated persons engaged solely in sales of private securities offerings.

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: November 28, 2000



**1032. Categories of Representative Registration**

\* \* \*

**(b) Limited Representative – Investment Company and Variable Contracts Products**

\* \* \*

(2) A person qualified solely as a Limited Representative – Investment Company and Variable Contracts Products shall not be qualified to function as a representative in any area not [pr]described in paragraph (b)(1)(A) hereof.

**(c) Limited Representative – Direct Participation Programs**

\* \* \*

(2) A person qualified solely as a Limited Representative – Direct Participation Programs shall not be qualified to function in any area not [pr]described in[by] subparagraph (1) hereof.

**(d) Limited Representative – Options**

\* \* \*

(3) A person registered as a Limited Representative – Options shall not be qualified to function in any area not [pr]described in[by] subparagraph (1)(A) hereof.

**(e) Limited Representative – Corporate Securities**

\* \* \*

(2) A person qualified solely as a Limited Representative – Corporate Securities shall not be qualified to function in any area not [pr]described in[by] subparagraph (1) hereof.

---

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

\* \* \*

**(g) Limited Representative – Government Securities**

\* \* \*

(2) A person registered solely as a Limited Representative-Government Securities shall not be qualified to function in any area not [pr]described in[by] subparagraph (1)(A) hereof.

**(h) Limited Representative – Private Securities Offerings**

(1) Each person associated with a member who is included within the definition of a representative as defined in Rule 1031 may register with the Association as a Limited Representative – Private Securities Offerings if:

(A) such person’s activities in the investment banking and securities business involve effecting sales as part of a primary offering of securities not involving a public offering, pursuant to Section 3(b), 4(2) or 4(6) of the Securities Act of 1933 and the rules and regulations thereunder, provided, however, that such person shall not effect sales of municipal securities, or equity interests in or the debt of direct participation programs as defined in Rule 1022(e)(2); and

(B) subject to subparagraph (2) hereof, such person passes an appropriate qualification examination for Limited Representative – Private Securities Offerings.

(2) The Association shall, upon such evidence as the Association determines to be appropriate, deem any person who while employed by a bank, engaged in effecting sales of private securities offerings as described in subparagraph (1)(A) hereof, during the period from May 12, 1999 to

November 12, 1999, as qualified to register as a Limited Representative – Private Securities Offerings without the need to pass the qualification examination required by subparagraph (1)(B) hereof.

(3) A person registered as a Limited Representative – Private Securities Offerings shall not be qualified to function in any area not described in subparagraph (1)(A) hereof.

\* \* \*

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

The purpose of the proposed rule change is to implement Section 203 of the Gramm-Leach-Bliley Act of 1999 (“GLBA”).<sup>3</sup> Section 203 of GLBA adds new subsection (j) to Section 15A of the Act, which requires that the NASD, as a registered securities association, create a limited registration category for any associated person of a member whose investment banking and securities business is limited solely to effecting sales of private securities offerings. Section 203 also states that any bank

---

<sup>3</sup> Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102, 113 Stat. 1338 (1999).

employee who during the six-month period prior to the enactment of GLBA (*i.e.*, from May 12, 1999 to November 12, 1999) engaged in effecting such sales shall not be required to pass a qualification examination in order to be deemed qualified in the limited registration category. Section 203 becomes effective on May 12, 2001.

GLBA also establishes functional regulation, meaning that each industry segment of a multi-industry organization will be regulated by the agency charged by law with the regulation of that industry. In connection with functional regulation, GLBA eliminates the long-standing general exclusion for banks from the definitions of “broker” and “dealer” under the Act and instead provides exemptions for certain bank activities. With respect to private placement activity, GLBA permits private placements to be effected in a bank (and not a broker or dealer) so long as the bank (a) is not affiliated with a broker or dealer that is engaged in dealing, market making, or underwriting, other than with respect to exempted securities, or (b) is not affiliated with any broker or dealer provided that the aggregate dollar amount of any private placement offering (excluding government or municipal securities) does not exceed 25% of the bank’s capital. Notwithstanding this exclusion, many banks will be required to effect private securities offerings in a registered broker/dealer. For these banks, employees that effect sales of private securities offerings will be required to become associated persons of a registered broker/dealer, and as such, will be subject to NASD qualification examination and other requirements.

As part of the effort to lessen the effects of functional regulation on banks and their employees, GLBA creates a new limited registration category for persons engaging solely in sales of private

---

securities offerings. As noted above, while certain banks will still be permitted to engage in private securities offerings, many others will be required to effect these sales in a registered broker/dealer with appropriately registered personnel.

The proposed rule change effectuates the provisions of Section 203 by establishing a new registration category for persons engaged solely in sales of private securities offerings. Applicants seeking to register with the NASD under this limited registration category must meet the eligibility criteria for associated persons of a member in the NASD By-Laws and pass the necessary qualification examination. However, consistent with GLBA, the proposed rule change provides that any person who engaged in sales of private securities offerings as an employee of a bank during the period from May 12, 1999 to November 12, 1999, is not required to complete the qualification examination. Applicants seeking exemption from the qualification examination pursuant to this provision will be required to provide such evidence as NASD Regulation determines to be appropriate, demonstrating that he or she was engaged in effecting sales of private securities offerings at the bank during the period from May 12, 1999 to November 12, 1999.

The new limited registration category permits a person to effect sales of private securities offerings. However, the new limited registration category does not permit a person to effect sales of municipal securities or equity interests in or the debt of direct participation programs (“DPP securities”). Although sales of municipal securities and DPP securities may involve offerings of private securities, NASD Regulation does not believe that the limited registration category should allow persons to sell such securities. Persons who effect sales of municipal securities, including bank employees, currently

are required to be qualified in accordance with the rules of the Municipal Securities Rulemaking Board (“MSRB”). MSRB rules, among other things, require that persons pass a specific qualification examination. NASD Regulation does not believe that the new limited registration category was intended to create a subcategory of persons that are eligible to engage in certain offerings of municipal securities without meeting the specific qualification requirements of the MSRB.

Similarly, the new limited registration category does not qualify a person to engage in offerings of DPP securities. In general, DPP securities are specialized programs that provide for flow-through tax consequences. Persons who wish to effect sales of DPP securities are required to register as a general securities representative or under a limited registration category for DPP securities.<sup>4</sup> Based upon conversations with banking industry representatives, NASD Regulation does not believe that unregistered bank employees generally effect sales of DPP securities. In view of the highly specialized nature of DPP securities, the existence of a limited registration category for such securities, and the general lack of experience in such securities by unregistered bank personnel, NASD Regulation does not believe that the new limited registration category should qualify an associated person to sell DPP securities. Moreover, by eliminating DPP securities from the scope of the new limited registration category, the qualification examination will not be burdened with questions on these highly specialized products. However, with respect to current bank employees who may be eligible to register under the new limited registration category without taking the qualification examination pursuant to paragraph (h)(2) of the proposed rule change, NASD Regulation staff will consider on a case-by-case basis

---

<sup>4</sup> See NASD Rule 1032(c).

whether a bank employee with experience in DPP securities registering with a broker/dealer should be authorized to effect sales of DPP securities without having to complete the general securities representative or specific DPP securities limited qualification examination.

NASD Regulation is making the proposed rule change to effectuate the provisions of Section 203 of GLBA. NASD Regulation staff is currently in the process of developing the qualification examination and anticipates filing the study outline and specifications for the examination in February 2001.

(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 proposed rule change also is necessary to implement Section 203 of GLBA.

(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

Not applicable.

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].

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

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

Jonathan G. Katz  
Secretary