

January 3, 2002

Ms. 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-2002-02 - Proposed Rule Change to Amend NASD Code of Procedure Rule 9522**

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 Sarah J. Williams, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8083; e-mail sarah.williams@nasd.com. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Patrice M. Gliniecki  
Vice President and  
Acting General Counsel

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" 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 amend NASD Code of Procedure Rule 9522(e)(2).

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

\* \* \*

**9522. Initiation of Eligibility Proceeding; Member Regulation Consideration**

(a) through (e)(2)(A): No change

(B) The Department of Member Regulation finds, after reasonable inquiry, that except for the identity of the employer concerned, the terms and conditions of the proposed admission or continuance are the same in all material respects as those imposed or not disapproved in connection with a prior admission or continuance of the disqualified person pursuant to an order of the Commission under SEC Rule 19h-1 or other substantially equivalent written communication, and that there is no intervening conduct or other circumstance that would cause the employment to be inconsistent with the public interest or the protection of investors; [or]

(C) The disqualification previously was a basis for the institution of an administrative proceeding pursuant to a provision of the federal securities laws, and was considered by the Commission in determining a sanction against such disqualified person

in the proceeding; and the Commission concluded in such proceeding that it would not restrict or limit the future securities activities of such disqualified person in the capacity now proposed, or, if it imposed any such restrictions or limitations for a specified time period, such time period has elapsed[.]; or

(D) The disqualification consists of a court order or judgment of injunction or conviction, and such order or judgment:

(i) expressly includes a provision that, on the basis of such order or judgment, the Commission will not institute a proceeding against such person pursuant to Section 15(b) or 15B of the Act or that the future securities activities of such persons in the capacity now proposed will not be restricted or limited; or

(ii) includes such restrictions or limitations for a specified time period and such time period has elapsed.

\* \* \*

(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 July 23, 1999, which authorized the filing of the rule change with the SEC. The Nasdaq Stock Market, Inc. and NASD Dispute Resolution, Inc. 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 the NASD to its Subsidiaries. The NASD Board of Governors had an opportunity to review the proposed rule change at its meeting on July 29, 1999.

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 amendments to NASD Rules without recourse to the membership for approval.

(b) Questions regarding this rule filing may be directed to Sarah J. Williams, Assistant General Counsel, NASD Regulation, Office of General Counsel, at (202) 728-8083.

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 expressly describe in Rule 9522 those instances in which the Department of Member Regulation may approve an MC-400 application for relief from NASD eligibility requirements. In August 2000, the SEC approved amendments to Rule 9522 to, among other things, provide the Department of Member Regulation with the discretion to approve an MC-400 application in those cases in which the disqualifying event is excepted from the “full” notice requirements of Rule 19h-1 under the Exchange Act, but where a “short form” notification to the SEC under Rule 19h-1 is still required.<sup>1</sup> The proposed rule change provides a complete description, within Rule 9522, of those cases in which the disqualifying event requires “short form” notification to the SEC under Rule 19h-1.

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

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<sup>1</sup> See SEC Release No. 34-43102, 65 F.R. 48266 at 48269 (August 1, 2000).

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.

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

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, in that the proposed rule change does not significantly affect the protection of investors or the public interest; and does not impose any significant burden on competition. NASD Regulation has requested that the SEC waive the requirement of Rule 19b-4(f)(6)(iii) that a written notice of intent to file the proposed rule change, along with a brief description and text of the proposed rule change, be submitted five days prior to the date of filing. NASD Regulation also requested that the SEC waive the requirement that the proposed rule change, by its terms, not become operative for 30 days after the date of the filing as set forth in Rule 19b-4(f)(6)(iii), as consistent with the protection of investors and the public interest because the proposed rule change provides a full description,

within Rule 9522, of the cases in which the Department of Member Regulation may approve an MC-400 application for relief from NASD eligibility requirements.

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: \_\_\_\_\_  
Patrice M. Gliniecki  
Vice President and Acting General Counsel

Date: January 3, 2002

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- \_\_\_\_\_ ; File No. SR-NASD- \_\_\_\_\_ )

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

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 January \_\_\_\_, 2002, 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

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

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**9522. Initiation of Eligibility Proceeding; Member Regulation Consideration**

(a) through (e)(2)(A): No change

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

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



(B) The Department of Member Regulation finds, after reasonable inquiry, that except for the identity of the employer concerned, the terms and conditions of the proposed admission or continuance are the same in all material respects as those imposed or not disapproved in connection with a prior admission or continuance of the disqualified person pursuant to an order of the Commission under SEC Rule 19h-1 or other substantially equivalent written communication, and that there is no intervening conduct or other circumstance that would cause the employment to be inconsistent with the public interest or the protection of investors; [or]

(C) The disqualification previously was a basis for the institution of an administrative proceeding pursuant to a provision of the federal securities laws, and was considered by the Commission in determining a sanction against such disqualified person in the proceeding; and the Commission concluded in such proceeding that it would not restrict or limit the future securities activities of such disqualified person in the capacity now proposed, or, if it imposed any such restrictions or limitations for a specified time period, such time period has elapsed[.];  
or

(D) The disqualification consists of a court order or judgment of injunction or conviction, and such order or judgment:

(i) expressly includes a provision that, on the basis of such order or judgment, the Commission will not institute a proceeding against such person pursuant to Section 15(b) or 15B of the Act or that the future securities activities of such persons in the capacity now proposed will not be restricted or limited; or

(ii) includes such restrictions or limitations for a specified time period and such time period has elapsed.

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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

1. Purpose

The purpose of the proposed rule change is to expressly describe in Rule 9522 those instances in which the Department of Member Regulation may approve an MC-400 application for relief from NASD eligibility requirements. In August 2000, the SEC approved amendments to Rule 9522 to, among other things, provide the Department of Member Regulation with the discretion to approve an MC-400 application in those cases in which the disqualifying event is excepted from the “full” notice requirements of Rule 19h-1 under the Exchange Act, but where a “short form” notification to the SEC under Rule 19h-1 is still required.<sup>3</sup> The proposed rule change provides a complete description, within Rule

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<sup>3</sup> See SEC Release No. 34-43102, 65 F.R. 48266 at 48269 (August 1, 2000).

9522, of those cases in which the disqualifying event requires “short form” notification to the SEC under Rule 19h-1.

## 2. 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.

### 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

The proposed rule change has been filed by the Association as a “non-controversial” rule change under Rule 19b-4(f)(6) under the Act.<sup>4</sup> NASD Regulation has requested that the SEC waive the requirement of Rule 19b-4(f)(6)(iii) that a written notice of intent to file the proposed rule change, along with a brief description and text of the proposed rule change, be submitted five days prior to the date of filing. NASD Regulation also requested that the SEC

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<sup>4</sup> 17 CFR § 240.19b-4(f)(6)

waive the requirement that the rule change, by its terms, not become operative for 30 days after the date of the filing as set forth in Rule 19b-4(f)(6)(iii), as consistent with the protection of investors and the public interest because the proposed rule change provides a full description, within Rule 9522, of the cases in which the Department of Member Regulation may approve an MC-400 application for relief from NASD eligibility requirements. The Commission agreed to waive those requirements. Accordingly, the proposed rule change will become effective and operative upon filing pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

At any time within 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. 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.<sup>5</sup>

Jonathan G. Katz  
Secretary

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<sup>5</sup> 17 CFR 200.30-3(a)(12).