

September 24, 2001

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-2001-58 - Proposed Rule Change to Amend NASD Code of Procedure Rule 9216 and NASD Code of Procedure Rule 9270**

Dear Ms. England:

NASD Regulation, Inc. hereby withdraws SR-NASD-2001-54 (filed on August 16, 2001) and encloses for your review Proposed Rule Change to Amend NASD Code of Procedure Rule 9216 and NASD Code of Procedure Rule 9270. 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, NASD Regulation, Inc., 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,

Patrice M. Gliniecki  
Vice President and  
Deputy General Counsel

cc: Christopher B. Stone

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) 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 amend NASD Code of Procedure Rule 9216 and NASD Code of Procedure Rule 9270.

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

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**9200. Disciplinary Proceedings**

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**9216. Acceptance, Waiver, and Consent; Plan Pursuant to SEC Rule 19d-1(c)(2)**

**(a) Acceptance, Waiver, and Consent Procedures**

(1) and (2) No change

(3) If the member or associated person executes the letter of acceptance, waiver, and consent, it shall be submitted to the National Adjudicatory Council. The Review Subcommittee or the [General Counsel] Office of Disciplinary Affairs may accept such letter or refer it to the National Adjudicatory Council for acceptance or rejection by the National Adjudicatory Council. The Review Subcommittee may reject

such letter or refer it to the National Adjudicatory Council for acceptance or rejection by the National Adjudicatory Council.

(4) If the letter is accepted by the National Adjudicatory Council, the Review Subcommittee, or the [General Counsel] Office of Disciplinary Affairs, it shall be deemed final and shall constitute the complaint, answer, and decision in the matter. If the letter is rejected by the Review Subcommittee or the National Adjudicatory Council, NASD Regulation may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member or associated person shall not be prejudiced by the execution of the letter of acceptance, waiver, and consent under subparagraph (a)(1) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

**(b) Procedure for Violation Under Plan Pursuant to SEC Rule 19d-1(c)(2)**

(1) and (2) No change

(3) If the member or associated person executes the minor rule violation plan letter, it shall be submitted to the National Adjudicatory Council. The Review Subcommittee or the [General Counsel] Office of Disciplinary Affairs may accept such letter or refer it to the National Adjudicatory Council for acceptance or rejection by the National Adjudicatory Council. The Review Subcommittee may reject such letter or refer it to the National Adjudicatory Council for acceptance or rejection by the National Adjudicatory Council.(4) If the letter is accepted by the National Adjudicatory Council, the Review Subcommittee, or the [General Counsel] Office of

Disciplinary Affairs, it shall be deemed final and the Association shall report the violation to the Commission as required by the Commission pursuant to a plan approved under SEC Rule 19d-1(c)(2). If the letter is rejected by the Review Subcommittee or the National Adjudicatory Council, NASD Regulation may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member or associated person shall not be prejudiced by the execution of the minor rule violation plan letter under subparagraph (b)(1) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

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**9270. Settlement Procedure**

(a) through (d) No change

(e) and (e)(1) No change

(e)(2) Before an offer of settlement and an order of acceptance shall become effective, they shall be submitted to and accepted by the National Adjudicatory Council. The Review Subcommittee or the [General Counsel] Office of Disciplinary Affairs may accept such offer of settlement and order of acceptance or refer them to the National Adjudicatory Council for acceptance or rejection by the National Adjudicatory Council. The Review Subcommittee may reject such offer of settlement and order of acceptance or refer them to the National Adjudicatory Council for acceptance or rejection by the National Adjudicatory Council.

(3) If the offer of settlement and order of acceptance are accepted by the National Adjudicatory Council, the Review Subcommittee, or the [General Counsel] Office of Disciplinary Affairs, they shall become final and the General Counsel shall issue the order and notify the Office of Hearing Officers.

(f) through (j) No change

\* \* \*

(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 25, 2001, 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 26, 2001. 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.

The proposed implementation date is October 1, 2001.

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

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 substitute for Office of General Counsel ("OGC") review of proposed Acceptance, Waivers and Consents ("AWCs") and proposed violation letters under the minor rule violation plan pursuant to SEC Rule 19d-1(c)(2) ("minor rule violations") pursuant to Rule 9216 and Offers of Settlement pursuant to Rule 9270 (hereinafter collectively referred to as "settlements") review by the Office of Disciplinary Affairs ("ODA"). This change in administrative practice would reduce certain duplications of effort on the part of staff of ODA and OGC in the settlement review process, and it would also shorten the time that it generally takes to accept or reject a settlement. The proposed rule change would give ODA the sole responsibility for reviewing and approving proposed settlements and for referring selected proposed settlements to the National Adjudicatory Council ("NAC"), via the Review Subcommittee ("RSC"). Pursuant to Article V, Section 5.11 of the NASD Regulation By-Laws, the RSC is appointed by the NAC to determine whether disciplinary and membership proceedings decisions should be called for review by the NAC under the Rules of Association and to perform any other function authorized by the Rules of the Association. The RSC is composed of no fewer than two and no more than four members of the NAC, and the number of non-industry members equals or exceeds the number of industry members. OGC will continue to act in its role as counsel to the NAC and the RSC.

Currently, all proposed settlements receive at least two layers of independent staff review in addition to the internal supervisory processes of the Departments of Enforcement

and Market Regulation. ODA conducts the first review. ODA (formerly called the Office of Disciplinary Policy) was established in 1997 within the Office of the President. Its purpose is to participate in the case authorization process as an independent reviewer of complaints and settlements developed by the Departments of Enforcement and Market Regulation.<sup>1</sup> ODA currently has the authority either to: (1) authorize a proposed settlement, in which case it is forwarded to the NAC (via OGC) for acceptance under NASD Code of Procedure Rule 9216 or NASD Code of Procedure Rule 9270 (uncontested offers of settlement); or (2) refuse to authorize a proposed settlement, in which case the matter is sent back to Enforcement or Market Regulation for further consideration.<sup>2</sup>

OGC serves as counsel to the NAC (via the RSC) in its review of proposed settlements authorized by ODA. Rule 9216 and Rule 9270 currently provide that OGC (on behalf of the NASD Regulation General Counsel) may accept settlements on behalf of the NAC or refer them to the RSC for acceptance or rejection, and the RSC may accept or reject settlements on behalf of the NAC.

The proposed rule change will revise the Code of Procedure to substitute ODA for OGC in the settlement process, and give ODA the authority to accept, but not reject, settlements. If ODA determines not to accept a settlement, the Departments of Enforcement and Market Regulation will have the option either to renegotiate the settlement based on ODA's input or to submit the proposed settlement to the RSC. When matters are presented to

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<sup>1</sup> In 1997 and 1998, ODA reviewed all complaints and proposed settlements for policy issues, but a Case Authorization Unit in the Department of Enforcement handled formal authorization. The policy review and authorization functions were consolidated within ODA in January 1999.

<sup>2</sup> In practice, the NAC generally does not review settlements, leaving that function to OGC and the RSC.



the RSC, ODA and Enforcement/Market Regulation attorneys will present their positions to the RSC (in writing and orally), and OGC staff will act as advisor to the RSC. As is the case under the current system, the RSC will either accept or reject. ODA will also refer matters to the RSC that raise significant policy issues.

OGC will continue to serve as counsel to the NAC and RSC on all adjudicative matters, it will advise the NAC and/or RSC on particular settlements as necessary, and it will bring significant policy issues to the NAC as required. OGC will also meet with ODA and Enforcement and Market Regulation management on a regular basis to discuss these significant issues. OGC will review all accepted settlements and identify trends, issues, and evidentiary and legal problems for the NAC.

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. NASD Regulation believes that the proposed rule change will reduce the current duplication of effort by ODA and OGC and shorten the time that it generally takes to accept or reject a settlement.

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.<sup>3</sup>

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)(3) of Rule 19b-4 thereunder, in that the self-regulatory organization has designated the proposed rule change as concerned solely with the administration of the self-regulatory organization.

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.

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<sup>3</sup> This proposed rule change was not published for comment by the NASD through its Notice to Members process.

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  
Deputy General Counsel

Date: September 24, 2001

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 2001, 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

NASD Regulation proposes to amend NASD Code of Procedure Rule 9216 and NASD Code of Procedure Rule 9270. The proposed amendments would substitute for Office

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

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

of General Counsel ("OGC") review of proposed Acceptance, Waivers and Consents ("AWCs") ") and proposed violation letters under the minor rule violation plan pursuant to SEC Rule 19d-1(c)(2) ("minor rule violations") pursuant to Rule 9216 and Offers of Settlement pursuant to Rule 9270 (hereinafter collectively referred to as "settlements") review by the Office of Disciplinary Affairs ("ODA").

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

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#### **9200. Disciplinary Proceedings**

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#### **9216. Acceptance, Waiver, and Consent; Plan Pursuant to SEC Rule 19d-1(c)(2)**

##### **(b) Acceptance, Waiver, and Consent Procedures**

(1) and (2) No change

(3) If the member or associated person executes the letter of acceptance, waiver, and consent, it shall be submitted to the National Adjudicatory Council. The Review Subcommittee or the [General Counsel] Office of Disciplinary Affairs may accept such letter or refer it to the National Adjudicatory Council for acceptance or rejection by the National Adjudicatory Council. The Review Subcommittee may reject such letter or refer it to the National Adjudicatory Council for acceptance or rejection by the National Adjudicatory Council.

(4) If the letter is accepted by the National Adjudicatory Council, the Review Subcommittee, or the [General Counsel] Office of Disciplinary Affairs, it shall be deemed final and shall constitute the complaint, answer, and decision in the matter. If the letter is rejected by the Review Subcommittee or the National Adjudicatory Council, NASD Regulation may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member or associated person shall not be prejudiced by the execution of the letter of acceptance, waiver, and consent under subparagraph (a)(1) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

**(b) Procedure for Violation Under Plan Pursuant to SEC Rule 19d-1(c)(2)**

(1) and (2) No change

(3) If the member or associated person executes the minor rule violation plan letter, it shall be submitted to the National Adjudicatory Council. The Review Subcommittee or the [General Counsel] Office of Disciplinary Affairs may accept such letter or refer it to the National Adjudicatory Council for acceptance or rejection by the National Adjudicatory Council. The Review Subcommittee may reject such letter or refer it to the National Adjudicatory Council for acceptance or rejection by the National Adjudicatory Council.

(4) If the letter is accepted by the National Adjudicatory Council, the Review Subcommittee, or the [General Counsel] Office of Disciplinary Affairs, it shall be deemed final and the Association shall report the violation to the Commission as

required by the Commission pursuant to a plan approved under SEC Rule 19d-1(c)(2). If the letter is rejected by the Review Subcommittee or the National Adjudicatory Council, NASD Regulation may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member or associated person shall not be prejudiced by the execution of the minor rule violation plan letter under subparagraph (b)(1) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

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**9270. Settlement Procedure**

(a) through (d) No change

(e) and (e)(1) No change

(e)(2) Before an offer of settlement and an order of acceptance shall become effective, they shall be submitted to and accepted by the National Adjudicatory Council. The Review Subcommittee or the [General Counsel] Office of Disciplinary Affairs may accept such offer of settlement and order of acceptance or refer them to the National Adjudicatory Council for acceptance or rejection by the National Adjudicatory Council. The Review Subcommittee may reject such offer of settlement and order of acceptance or refer them to the National Adjudicatory Council for acceptance or rejection by the National Adjudicatory Council.

(3) If the offer of settlement and order of acceptance are accepted by the National Adjudicatory Council, the Review Subcommittee, or the [General Counsel]

Office of Disciplinary Affairs, they shall become final and the General Counsel shall issue the order and notify the Office of Hearing Officers.

(f) through (j) No change

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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 substitute for OGC review of proposed review by the ODA. This change in administrative practice would reduce certain duplications of effort on the part of staff of ODA and OGC in the settlement review process, and it would also shorten the time that it generally takes to accept or reject a settlement. The proposed rule change would give ODA the sole responsibility for reviewing and approving proposed settlements and for referring selected proposed settlements to the National Adjudicatory Council ("NAC"), via the Review Subcommittee ("RSC"). Pursuant to Article V, Section 5.11 of the NASD Regulation By-Laws, the RSC is appointed by the NAC to determine whether disciplinary and membership proceedings decisions should be called for review by the



NAC under the Rules of Association and to perform any other function authorized by the Rules of the Association. The RSC is composed of no fewer than two and no more than four members of the NAC, and the number of non-industry members equals or exceeds the number of industry members. OGC will continue to act in its role as counsel to the NAC and the RSC.

Currently, all proposed settlements receive at least two layers of independent staff review in addition to the internal supervisory processes of the Departments of Enforcement and Market Regulation. ODA conducts the first review. ODA (formerly called the Office of Disciplinary Policy) was established in 1997 within the Office of the President. Its purpose is to participate in the case authorization process as an independent reviewer of complaints and settlements developed by the Departments of Enforcement and Market Regulation.<sup>3</sup> ODA currently has the authority either to: (1) authorize a proposed settlement, in which case it is forwarded to the NAC (via OGC) for acceptance under NASD Code of Procedure Rule 9216 or NASD Code of Procedure Rule 9270 (uncontested offers of settlement); or (2) refuse to authorize a proposed settlement, in which case the matter is sent back to Enforcement or Market Regulation for further consideration.<sup>4</sup>

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<sup>3</sup> In 1997 and 1998, ODA reviewed all complaints and proposed settlements for policy issues but a Case Authorization Unit in the Department of Enforcement handled formal authorization. The policy review and authorization functions were consolidated within ODA in January 1999. Securities Exchange Act Release No. 40864 (Dec. 30, 1998), 64 FR 1050 (Jan. 7, 1999) (File No. SR-NASD-98-90).

<sup>4</sup> In practice, the NAC generally does not review settlements, leaving that function to OGC and the RSC.

behalf of the NASD Regulation General Counsel) may accept settlements on behalf of the NAC or refer them to the RSC for acceptance or rejection, and the RSC may accept or reject settlements on behalf of the NAC.

The proposed rule change will revise the Code of Procedure to substitute ODA for OGC in the settlement process, and give ODA the authority to accept, but not reject, settlements. If ODA determines not to accept a settlement, the Departments of Enforcement and Market Regulation will have the option either to renegotiate the settlement based on ODA's input or to submit the proposed settlement to the RSC. When matters are presented to the RSC, ODA and Enforcement/Market Regulation attorneys will present their positions to the RSC (in writing and orally), and OGC staff will act as advisor to the RSC. As is the case under the current system, the RSC will either accept or reject. ODA will also refer matters to the RSC that raise significant policy issues.

OGC will continue to serve as counsel to the NAC and RSC on all adjudicative matters, it will advise the NAC and/or RSC on particular settlements as necessary, and it will bring significant policy issues to the NAC as required. OGC will also meet with ODA and Enforcement and Market Regulation management on a regular basis to discuss these significant issues. OGC will review all accepted settlements and identify trends, issues, and evidentiary and legal problems for the NAC.

## 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. NASD Regulation believes that the proposed rule change will reduce the current duplication of effort by ODA and OGC and shorten the time that it generally takes to accept or reject a settlement.

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

Pursuant to Exchange Act Rule 19b-4(f)(3), NASD Regulation has designated this proposal as one concerned solely with the administration of the self-regulatory association. As such, the proposed rule change is immediately effective pursuant to Section 19(b)(3)(A) of the Act.

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).